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Supreme Court, U.S.
FILED

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No. _____

In the Supreme Court of the United States

WILLIAM TUCKER AS PERSONAL REPRESENTATIVE OF THE ESTATE OF CYNTHIA DOLORES TUCKER, A/K/A C. DOLORES TUCKER, FOR C. DELORES TUCKER, DECEASED AND WILLIAM TUCKER,

Petitioners

v.

PHILADELPHIA DAILY NEWS, PHILADELPHIA NEWSPAPERS, INC. and KNIGHT RIDDER, INC., SPORTS & ENTERTAINMENT LITIGATION REPORTER, ANDREWS PUBLICATIONS, INC., LEGAL COMMUNICATIONS, LTD., THE LEGAL INTELLIGENCER, MERIDIAN VENTURE PARTNERS, LP, BASELINE II, INC., AND THE ENTERTAINMENT LITIGATION REPORTER,

Respondents

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a public figure plaintiff in a civil action for defamation against a newspaper is required to plead that she unequivocally told the newspaper that what it was about to print was false in order to maintain an action for defamation?

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1
Petition for a Writ of Certiorari

PETITION FOR A WRIT OF CERTIORARI

William Tucker, as personal representative of the Estate of Cynthia Dolores Tucker a/k/a C. Dolores Tucker, respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Pennsylvania in this case.

OPINIONS BELOW

Tucker v. Philadelphia Daily News, 757 A.2d 938, 28 Media L. Rep. 2208, 2000 PA Super 183 (2000), *rearg. denied*, (2000); *appeal granted, Tucker v. Philadelphia Daily News*, 568 Pa. 704, 796 A.2d 985 (2001); *affirmed in part and reversed in part, Tucker v. Philadelphia Daily News*, 577 Pa. 598, 848 A.2d 113 (2004). The opinion of the Superior Court of Pennsylvania on remand is unpublished, *Tucker v. Daily News*, 889 A.2d 125 (Pa.Super. Oct. 25, 2005) (2 cases); *petition for allowance of appeal denied, Tucker v. Phila. Daily News*, ___ A.2d ___, 2006 WL 623115 (Pa. March 14, 2006).

JURISDICTION

The Supreme Court of Pennsylvania issued its order on March 14, 2006. Your Court has jurisdiction pursuant to 28 U.S.C. §1257 (final judgment rendered by the highest court of a State where right, privilege or immunity specifically claimed under the Constitution).

STATEMENT

1. Civil action for money damages against the *Philadelphia Daily News* and the *Legal Intelligencer,* instituted by Complaint filed in Court of Common Pleas in Philadelphia, for "defamation." Pet App. 113a

2. C. DeLores Tucker, a resident of Philadelphia, was an outspoken critic of "gangsta" rap music, whose efforts were met with death threats in recording publications and a "music" recording by Tupac Shakur calling Mrs. Tucker a "muthafucker" and a traitor to her people.

3. In response to Shakur's recording, C. DeLores Tucker brought an action for defamation in federal court in Philadelphia, Pet. App. 162a.

4. Mrs. Tucker's Complaint vs Shakur included as Mrs. Tucker's damages past and future "reasonable fear for her life," "death threats," "severe emotional distress," "object of scorn to more than 5,000,000 people," "medical expenses," "mental pain, suffering, and inconvenience; loss of life's pleasures; fears for her life; has lost her personal freedom to travel freely where and when she desires" but not "sex", Pet. App. 167a-168a;

5. Regarding Mrs. Tucker's suit against Shakur, Respondent—The *Philadelphia Daily News* reported:

> *Suit vs. Shakur estate says 'vile' lyrics ruined her rep—and her sex life*
>
> C. DeLores Tucker has filed a $10 million lawsuit against Tupac Shakur's estate, saying some of the late rapper's lyrics caused her mental anguish and diminished her sex life.

Pet App. 128a-129a.

6. The *Legal Intelligencer,* another Philadelphia periodical, which reports legal news to the legal community reported:

> C. DeLores Tucker filed the suit last week in Philadelphia federal court, claiming, among other things, that the anguish caused by the lyrics diminished her sex life
> ...

Pet. App. 131a.

7. On April 29, 2004 the Supreme Court of Pennsylvania ruled:

> ... Tuckers' Complaint is dismissed. The Tuckers are granted leave to replead only to the extent they are able to allege that, before Appellant-newspapers printed the articles, the Tuckers or their representative unequivocally told Appellant-newspapers that their loss of consortium claim did not include a claim that the lyrics damaged their sex lives.

Tucker v. Philadelphia Daily News, 577 Pa. 598, 635, 848 A.2d 113, 136 (2004).

8. On remand, the Court of Common Pleas dismissed the Tuckers' Amended Complaint, Pet. App. 20a, ignoring all other factual averments in Plaintiffs' Amended Complaint vs. these newspaper Defendants, including:

- C. DeLores Tucker is known to the newspapers as a septuagenarian daughter of a minister who campaigned publicly against pornographic "gangsta" rap lyrics, Pet. App. 115a;
- Defendant *Daily News* reported on its own interview where *Daily News* reporter read to Mrs. Tucker Shakur's lyrics calling her a traitor and "muthafucker" and Mrs. Tucker responded that she would sue: "This just fires my determination that I'll do whatever I have to do legally to stop this music. . . ", Pet. App. 135a;
- Mrs. Tucker did sue Shakur; Pet. App. 162a;

• Mrs. Tucker issued a press release calling her suit vs. Shakur "sweeping defamation of character litigation" and stating "It called me a personal obscenity . . . for fighting against this music. . . . I am against the executive and publicists who administer 'gangsta rap', produce and circulate it all over the world, using vile, demeaning lyrics, encouraging and abetting some of their more aggressive artists in personally defaming their critics ... I am not unmindful of the risks to my life that I take in filing this action. However, I am even more concerned about the many, many young lives that have already been lost needlessly and the little children who will be lost if I do not say, as I am saying to this industry —'STOP NOW!'" Pet. App. 137a;

• Mrs. Tucker's Complaint vs. Shakur included as Mrs. Tucker's damages past and future "reasonable fear for her life," "death threats," "severe emotional distress," "object of scorn to more than 5,000,000 people," "medical expenses," "mental pain, suffering, and inconvenience; loss of life's pleasures, fears for her life; has lost her personal freedom to travel freely where and when she desires" but not "sex", Pet. App. 121a;

• There was no mention of "sex" or "sex life" in the Complaint vs. Shakur, Pet. App. 121a;

• Defendant newspapers did not obtain a copy of the Complaint vs. Shakur;

• Defendants ignored Mrs. Tucker's press release re Complaint vs. Shakur;

• The *Daily News'* reporter talked to Mrs. Tucker's lawyer who answered his questions and explained the basis of the Tuckers' Complaint vs. Shakur which did not involve the Tuckers' sex life, Pet. App. 124a;

• Both Defendant newspapers quoted Richard Fischbein who was the attorney—administrator of the

Tupac Shakur Estate, who stated: "It's hard for me to conceive how these lyrics could destroy her sex life," thus literally indicating his own disbelief in the proposition asserted, Pet. App. 125a;

- Both Defendants' articles mischaracterized Mrs. Tucker's suit vs. Shakur when they misrepresented that Mrs. Tucker was suing for $10 million because Shakur's lewd lyrics destroyed Mrs. Tucker's sex life, Pet. App. 125a;
- Both Defendants' reports, that C. DeLores Tucker filed a lawsuit claiming that lyrics diminished and/or ruined her sex life, were made with knowledge of the falsity of the report or reckless disregard for the falsity;
- Loss of consortium was not Mrs. Tucker's claim.

9. Superior Court of Pennsylvania affirmed without published opinion, *Tucker v. Daily News*, 889 A.2d 125 (October 25, 2005) (two cases), Pet. App. 3a, and the Supreme Court of Pennsylvania denied discretionary review. Pet. App. 1a.

10. This petition followed.

REASONS FOR GRANTING THE WRIT

1. Your Court should grant this petition because the Supreme Court of Pennsylvania has decided an important federal question in a way that conflicts with relevant decisions of Your Court. The Pennsylvania Supreme Court has determined that a public figure plaintiff cannot even file a Complaint in a defamation action without pleading that the plaintiff told the publisher prior to publication that the defamatory statement was false.

In order to prevail in an action for libel a public figure plaintiff must show *either* evidence of deliberate falsification *or* reckless *publication despite the publisher's awareness of probable falsity, St. Amant v. Thompson,* 390 U.S. 727, 88 S.Ct. 1323, 20 L.Ed.2d 262 (1968); *Curtis Publishing Co. v. Butts,* 388 U.S. 130, 87 S.Ct. 1975, 18 L.Ed.2d 1094 (1967). Under this rule, liability requires either knowing falsehood *or* sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. *St. Amant v. Thompson,* 390 U.S. 727, 731, 88 S.Ct. 1323, 1325, 20 L.Ed.2d 262 (1968).

Reckless disregard means Defendant made the false publication with "a 'high degree of awareness of . . . probable falsity' " or " 'entertained serious doubts as to the truth of [the] publication.' " *Harte-Hanks Communications, Inc. v. Connaughton,* 491 U.S. 657, 666-67, 109 S.Ct. 2678, 2686, 105 L.Ed.2d 562 (1989) (citations and footnote omitted) (quoting *St. Amant v. Thompson,* 390 U.S. 727, 730, 88 S.Ct. 1323, 1325, 20 L.Ed.2d 262 (1968)). The *Daily News* interviewed Mrs. Tucker in 1996 when she told the *Daily News* she would bring a lawsuit on account of Shakur's defamatory lyrics. Both Defendants' reliance on a source who expressed his own doubt

about the probable truth of the matter asserted shows a high degree of awareness of probable falsity. *See, Wells v Liddy,* 186 F.3d 505 (4th Cir. 1999).

"'[S]ubjective awareness of probable falsity' may be found if 'there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports.'" *Herbert v. Lando,* 441 U.S. 153, 156-157, 99 S.Ct. 1635, 1639 (U.S.N.Y. 1979), citing *St. Amant v. Thompson, supra,* 390 U.S. at 732, 88 S.Ct. at 1326. To be liable, the defamer of public figures must know *or have reason to suspect* that his publication is false. *Herbert v. Lando,* 441 U.S. 153, 160, 99 S.Ct. 1635, 1640 (U.S.N.Y. 1979).

A public figure plaintiff is entitled to prove the defendant's state of mind through circumstantial evidence, *Harte-Hanks Communications, Inc. v. Connaughton,* 491 U.S. 657, 668, 109 S.Ct. 2678, 2686, 105 L.Ed.2d 562, 577 (1989), citing *Herbert v. Lando,* 441 U.S. 153, 160, 99 S.Ct. 1635, 1640 (U.S.N.Y. 1979). Recklessness may be found where there are obvious reasons to doubt the veracity of the informant or the accuracy of the report, *Harte-Hanks Communications, Inc. v. Connaughton,* 491 U.S. 657, 668, 109 S.Ct. 2678, 2686, 105 L.Ed.2d 562, 577 (1989). Evidence concerning motive and care are also probative, *Harte-Hanks Communications, Inc. v. Connaughton,* 491 U.S. 657, 668, 109 S.Ct. 2678, 2686, 105 L.Ed.2d 562, 577 (1989).

Whether defendant's allegations are so inherently improbable that only a reckless person would have put them in circulation or whether there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports are relevant factors showing actual malice. *St. Amant v. Thompson,* 390 U.S. 727, 732, 88 S.Ct. 1323, 1325, 20 L.Ed.2d 262 (1968).

Your Court has noted that "actual malice" calls a defendant's state of mind into question and does not readily lend

itself to summary disposition, *Hutchinson v. Proxmire,* 443 U.S. 111, 99 S.Ct. 2675, 61 L.Ed.2d 411 (1979), and that the publisher's knowledge is an appropriate area for discovery, *Herbert v. Lando,* 441 U.S. 153, 99 S.Ct. 1635 (1979).

2. This matter is before the court at the pleading stage not on summary judgment after discovery and development of some record. Thus, the record is necessarily sparse, limited only to the averments of the Amended Complaint and attachments.

The Amended Complaint demonstrates that the publications conflicted with the information possessed by Defendants. Moreover, the *Daily News* had specifically interviewed Mrs. Tucker on the subject when she spoke of bringing a lawsuit after publication of Shakur's recording calling Mrs. Tucker a "muthafucker" and traitor to her people.

3. This is a single issue case.

4. Certiorari is warranted because the rule applied by the Supreme Court of Pennsylvania is wrong on the merits. The Pennsylvania Supreme Court's rule is inconsistent with *Herbert v. Lando,* 441 U.S. 153, 160, 99 S.Ct. 1635, 1640 (U.S.N.Y. 1979), which recognized that the publisher's mental state must be a matter for discovery.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,
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Date: June 12, 2006

NO._____

IN THE
SUPREME COURT OF THE UNITED STATES

WILLIAM TUCKER AS PERSONAL REPRESENTATIVE OF THE ESTATE OF CYNTHIA DOLORES TUCKER, A/K/A C. DOLORES TUCKER, FOR C. DELORES TUCKER, DECEASED and WILLIAM TUCKER, Petitioners

v.

PHILADELPHIA DAILY NEWS, PHILADELPHIA NEWSPAPERS, INC. and KNIGHT RIDDER, INC., SPORTS & ENTERTAINMENT LITIGATION REPORTER, ANDREWS PUBLICATIONS, INC., LEGAL COMMUNICATIONS, LTD., THE LEGAL INTELLIGENCER, MERIDIAN VENTURE PARTNERS, LP, BASELINE II, INC., AND THE ENTERTAINMENT LITIGATION REPORTER, Respondents

PROOF OF SERVICE

I, Richard C. Angino, Esquire, hereby certify that I have this 12th day of June, 2006, served three true and correct copies of Petition for Writ of Certiorari to the Third Circuit Court of Appeals by sending same by United States first-class mail, postage prepaid, to the following.

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I further certify that all parties required to be served have been served.

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— A.2d —— Page 1
— A.2d ——, 2006 WL 623115 (Pa.) (Cite as: — A.2d —)

C. DELORES **TUCKER** AND WILLIAM **TUCKER,** HER HUSBAND, Petitioners

v.

PHILADELPHIA **DAILY NEWS,** PHILADELPHIA NEWSPAPERS, INC. AND KNIGHT-RIDDER, INC., SPORTS ENTERTAINMENT LITIGATION REPORTER, ANDREWS PUBLICATIONS, INC., LEGAL COMMUNICATIONS, LTD., THE LEGAL INTELLIGENCER, MERIDIAN VENTURE PARTNERS, LP, BASELINE II, INC., AND THE ENTERTAINMENT LITIGATION REPORTER, Respondents

No. 679-680 EAL 2005

Supreme Court of Pennsylvania.

Petition for Allowance of Appeal from the Order of the Superior Court

ORDER

PER CURIAM

AND NOW, this 14th day of March 2006, the Motion for Substitution of William Tucker as Personal Representative of the Estate of Cynthia Dolores Tucker a/k/a C. Dolores Tucker, for C. Delores Tucker, Deceased is granted. The Petition for Allowance of Appeal is denied.

Madame Justice Baldwin did not participate in the consideration or decision of this matter.

Pa., 2006.

C. DELORES TUCKER AND WILLIAM TUCKER, HER HUSBAND, Petitioners v. PHILADELPHIA DAILY NEWS, PHILADELPHIA NEWSPAPERS, INC. AND KNIGHT-RIDDER, INC., SPORTS ENTERTAINMENT LITIGATION REPORTER, ANDREWS PUBLICATIONS,

INC., LEGAL COMMUNICATIONS, LTD., THE LEGAL INTELLIGENCER, MERIDIAN VENTURE PARTNERS, LP, BASELINE II, INC., AND THE ENTERTAINMENT LITIGATION REPORTER, Respondents

— A.2d —, 2006 WL 623115 (Pa.)

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J. A28018/05

**NON-PRECEDENTIAL DECISION —
SEE SUPERIOR COURT I.O.P. 65.37**

IN THE SUPERIOR COURT OF PENNSYLVANIA

C. DELORES TUCKER AND WILLIAM TUCKER, HER HUSBAND,
Appellants

v.

PHILADELPHIA DAILY NEWS, PHILADELPHIA NEWSPAPERS, INC. AND KNIGHT-RIDDER, INC., SPORTS & ENTERTAINMENT LITIGATION REPORTER, ANDREWS PUBLICATIONS, INC., LEGAL COMMUNICATIONS, LTD., THE LEGAL INTELLIGENCER, MERIDIAN VENTURE PARTNERS LP, BASELINE II, INC. AND THE ENTERTAINMENT LITIGATION REPORTER,
Appellees

No. 64 EDA 2005

Appeal from the Order Entered December 15, 2004
In the Court of Common Pleas of Philadelphia County
Civil Division at No. July Term, 1998 No. 003644

IN THE SUPERIOR COURT OF PENNSYLVANIA

C. DELORES TUCKER AND WILLIAM TUCKER, HER HUSBAND,
Appellants

v.

PHILADELPHIA DAILY NEWS, PHILADELPHIA NEWSPAPERS, INC. AND KNIGHT-RIDDER, INC., SPORTS & ENTERTAINMENT LITIGATION REPORTER, ANDREWS PUBLICATIONS, INC.,

LEGAL COMMUNICATIONS, LTD., THE LEGAL INTELLIGENCER, MERIDIAN VENTURE PARTNERS LP, BASELINE II, INC. AND THE ENTERTAINMENT LITIGATION REPORTER,
Appellees

No. 65 EDA 2005

Appeal from the Order Entered December 15, 2004
In the Court of Common Pleas of Philadelphia County
Civil Division at No. July Term, 1998 No. 003644

BEFORE: MUSMANNO, BENDER and OLSZEWSKI, JJ.
MEMORANDUM: **FILED OCTOBER 25, 2005**

C. DeLores Tucker and her husband William (the Tuckers) appeal from the trial court's December 15, 2004 orders sustaining the preliminary objections filed by defendant-newspaper entities the *Philadelphia Daily News*, Philadelphia Newspapers, Inc., Knight-Ridder, Inc., Legal Communications, Ltd., and the *Legal Intelligencer* (collectively defendant-newspapers).[1] As further explained below, this defamation case was previously before the Supreme Court of Pennsylvania, which determined that the Tuckers' complaint failed to sufficiently plead actual malice, a necessary element of a defamation suit involving public figures like the Tuckers. ***Tucker v. Philadelphia Daily News,*** 848 A.2d 113 (Pa. 2004). Accordingly, the

---

[1] As our Supreme Court noted in a previous appeal, the Tuckers discontinued their case against Andres Publications, Inc., the *Sports & Entertainment Litigation Reporter*, the *Entertainment Litigation Reporter*, and Meridian Venture Partners, L.P. ***Tucker v. Philadelphia Daily News,*** 848 A.2d 113, 117 n.2 (Pa. 2004). The Court also noted that the *Philadelphia Daily News* and the *Legal Intelligencer* published the articles at issue in this case; Philadelphia Newspapers, Inc., Knight-Ridder Inc., and Legal Communications, Ltd. were apparently named in this suit because they are affiliated with the *Philadelphia Daily News* and the *Legal Intelligencer*, not because they published separate articles. ***Id.***

Supreme Court remanded the case to the trial court to allow the Tuckers to amend their complaint, on a limited basis specified by the Court, against the defendant-newspapers. Despite the Tuckers' amendment of their complaint upon remand, the trial court concluded that the Tuckers still failed to state a cause of action for defamation and, once again, sustained the defendant-newspapers' preliminary objections in the nature of a demurrer. We conclude initially that the Tuckers have not amended their complaint in the manner described by the Supreme Court so as to save their defamation suit. Accordingly, we affirm the orders sustaining defendant-newspapers' preliminary objections in the nature of a demurrer.

The facts and procedural history of this case were set forth by our Supreme Court in the previous appeal:

> C. Delores Tucker (Mrs. Tucker) is a well-known public figure who, from 1993 through 1997, led a high-profile "crusade" against "gangsta rap" music. Mrs. Tucker's campaign is undeniably one of public concern.
>
> In February of 1996, Interscope Records distributed the album "All Eyez on Me," in which deceased rapper Tupac Shakur responded to Mrs. Tucker's "attack" on gangsta-rap with the songs "Wonda Why They Call U Bitch" and "How Do U Want It." The lyrics conjure images of prostitution, and assert that Mrs. Tucker was only interested in money and had sold-out black interests to white politicians.
>
> On July 21, 1997, Mrs. Tucker and her husband, William Tucker (hereinafter the "Tuckers") filed suit against the Estate of Tupac Shakur and entities associated with the production, distribution, and sale of his music in the United States District Court for the Eastern District of Pennsylvania. ***Tucker v. MTS, Inc. t/a Tower Records et al.,*** No. 97 CV 4717 (E.D. Pa. filed

July 21, 1997) (hereinafter, ***Tucker II***). The ***Tucker II*** Complaint alleged that the production, distribution, and sale of records including "All Eyez on Me," caused Mrs. Tucker to fear for her life and suffer emotional distress. Mrs. Tucker demanded damages in an amount exceeding $10,000,000.00. Additionally, in paragraph fifty of the ***Tucker II*** Complaint, Mr. Tucker claimed that "as a result of his wife's injuries, [he] suffered a loss of advice, companionship and consortium."

On July 31, 1997, Mrs. Tucker issued a press release explaining that she filed the Complaint in ***Tucker II,*** which she described as "a multi-million dollar suit directed at the heart of the gangsta rap music in the US[sic]." The press release indicated that Mrs. Tucker had received death threats and that she would continue to fight against gangsta rap music in spite of them because she was "even more concerned about the many, many young lives that have already been lost needlessly and the little children who will be lost if [she did] not say ... to this industry—'STOP NOW.'" The press release also notes, without further explanation, that Mrs. Tucker's "husband, William, a well known businessman, joins her as a plaintiff in the suit."

The case before us arose because the Tuckers claim to have been defamed by the way in which several newspapers reported on ***Tucker II.***

Tucker, 848 A.2d at 117-120 (footnotes and citations to Reproduced Record omitted).

The Court proceeded to examine the articles published by the *Philadelphia Daily News* on August 2, 1997, and the article published by the *Legal Intelligencer* on August 4, 1997. ***Id.*** at 120-123. The *Philadelphia Daily News* article featured on its cover a picture of Mrs. Tucker and Tupac Shakur with the headline, "*A Dirty RAP Suit v. Shakur* es-

tate says 'vile' lyrics ruined her rep – and her sex life." ***Id.*** at 120. The headline for the article read, "Suit: Tupac dead wrong" with the sub-headline, "Rights leader says rapper's strong words ruined her life." ***Id.*** The *Philadelphia Daily News* article read as follows:

> C.De[L]ores Tucker has filed a $10 million lawsuit against Tupac Shakur's estate, saying some of the late rapper's lyrics caused her mental anguish and diminished her sex life.
>
> Tucker filed the lawsuit this week in Philadelphia federal court charging that Shakur's record-breaking 1996 CD "All Eyez on Me" caused her "great humiliation, mental pain and suffering."
>
> "She was really called a lot of bad names," said Tucker's Harrisburg attorney, Richard C. Angino: "It was all done to intimidate her."
>
> It also says the injuries caused her husband, William, to "suffer a loss of advice, companionship and consortium."
>
> Richard Fischbein, a New York attorney who is co-administrator of Shakur's estate, said he is baffled by the suit.
>
> "It is hard for me to conceive how these lyrics could destroy her sex life," Fischbein said. "But we can only wait for the proof to be revealed in court."
>
> Tucker and her husband took particular offense at the "lewd" and "indecent" references in two songs titled, "Wonda Why They Call U B—" and "How Do U Want It," the suit says.
>
> In one song, which the suit claims alludes to prostitution, the lyrics state: "Got your legs up trying to get rich. Keep you head up and your legs closed, dear Ms. C. De[L]ores Tucker."

"Tupac was just one of the instruments that participated in slandering Dr. Tucker," Angino said.

He said such companies as Death Row Records, Interscope Records, Time Warner, Seagram and Tower Records - all named as defendants in the suit - are also responsible."

"These companies make billions of dollars putting out music that destroy[s] African-Americans," Angino said.

In filing the lawsuit, Tucker said that over the years she has tried to stop the production and distribution of gangsta rap to "impressionable youth, because it tends to corrupt the morals of minors."

She contends it "contains vile, profane, obscene and indecent lyrics which glorify drugs, violence and illicit sex."

Tucker, head of the Washington-based National Political Congress of Black Women, formed an anti-rap campaign that gained wide-spread support from such notables as former U.S. Education Secretary William Bennett; U.S. Sen. Joseph Lieberman, D. Conn.; former Republican presidential nominee Bob Dole and retired Gen. Colin Powell.

In January 1996, she began an organized protest of Tower Records in Philadelphia because the store was selling Shakur's "All Eyez on Me" to minors.

Kathleine Diange, administrative assistant for the South Street Tower Records store, remembers when Tucker and her entourage protested outside the record store forcing it to close briefly.

"They were reading the obscene lyrics off of the CD through a bullhorn outside of the store," Diange recalled. "Then, they came into the store and started to throw the CDs on the ground."

The police were called and Tucker was arrested.

"I think she blew the situation out of proportion." Diange said.

Tucker, a former secretary of state for Pennsylvania, has been harshly condemned by some black intellectuals for aligning herself with right-wing political leaders to fight gangsta rap.

Tucker's lawyer defended her tactics, saying "Here is a woman who has spent her lifetime caring about her people, and now these record companies are trying to make her life miserable."

"This is the woman who marched with Martin Luther King to fight for integration, and now she is fighting a new battle against gangsta rap."

Since the record's release, her lawyer said Tucker has received death threats and now fears for her life. She also has incurred medical expenses, suffered a loss of life's pleasures and has lost the freedom to travel freely.

"Tucker has reasonable fear for her life because violence and death play a central role in the gangsta rap arena," the lawsuit states.

Calls were placed to Interscope Records, Death Row Records, and Time Warner, but no one was available for comment.

Id. at 120-121 n.12 (citation to Reproduced Record omitted). The headline for the *Legal Intelligencer* article read, "Gangsta Rap Critic Sues Shakur Estate for Album's Derogatory References." ***Id.*** at 121. The content of the *Legal Intelligencer* article was substantially similar to that of the *Philadelphia Daily News* article and was reprinted in our Supreme Court's opinion. ***Id.*** at 121 n.13. "The Tuckers allege that these articles are defamatory because they reported that the Tuckers sought damages because the lyrics diminished their sex life." ***Id.*** at 121-122.

Accordingly, on July 29, 1998, the Tuckers filed the instant action (also dubbed ***"Tucker IV"*** by our Supreme Court) against the defendant-newspapers "alleging that they had defamed the Tuckers since they interpreted the loss of consortium claim in ***Tucker II*** to include a claim for damage to the sexual relationship between the Tuckers." ***Id.*** at 120. As the Supreme Court explained:

> Mrs. Tucker claims that Appellant-newspapers ignored her press release and focused instead on the "sensationalize[d] ... sexual 'spin'" provided by the attorney for the Estate of Shakur. She alleges that the newspapers "distorted and misrepresented [her] Complaint as being one where she brought a $10 million lawsuit only because lewd lyrics destroyed her sex life ... [and that they] misrepresented and/or falsely represented that the July 21, 1997, ***[Tucker II]*** Complaint is a lawsuit wherein [the Tuckers] aver that Tupac Shakur's lewd lyrics had affected or destroyed the Tuckers' sex life." Central to her claim is a contention that, "the defendants have slandered and defamed [her and her husband] by making [them] objects of ridicule in the world, and ... with knowledge [of the falsity] or reckless disregard of the truth ... of the articles." Accordingly, in this case, Mrs. Tucker and her husband demanded compensatory damages in the amount of $1 million for current and future medical expenses, mental pain and suffering, inconvenience, loss of life's pleasures, humiliation, and embarrassment. They also sought punitive damages in amounts sufficient to prevent the [defendant-newspapers] from publishing future articles similar to the ones at issue in the instant case.

Id. at 122 (citations to Reproduced Record omitted). On March 19, 1999, the defendant-newspapers filed preliminary objections to the complaint in this case. They argued, *inter*

alia, that the newspaper articles at issue were not capable of a defamatory meaning and that the Tuckers failed to satisfactorily plead the element of actual malice. ***Id.*** The trial court sustained the preliminary objections and dismissed the complaint. ***Id.*** On appeal, our Court reversed and remanded for further proceedings; however, the defendant-newspapers filed a petition for allowance of appeal with our Supreme Court, which was granted.

Our Supreme Court explained that "[i]n an action for defamation, the plaintiff has the burden of proving ... [t]he defamatory character of the communication." ***Id.*** at 123 (quoting 42 Pa.C.S. § 8343(a)). The Supreme Court concluded, after thorough discussion, that the statement that the Tuckers claimed $10 million in compensation for damage to their sexual relationship was capable of a defamatory meaning. ***Id.*** at 123-126.

However, although finding the articles capable of a defamatory meaning, the Court proceeded to explain that "[t]o prevail on their defamation claim, the Tuckers, as public figures, must prove, by clear and convincing evidence that the allegedly defamatory statements were false and that [defendant-newspapers] either knew they were false or recklessly disregarded their falsity." ***Id.*** at 128. This is referred to as the actual malice standard. ***Id.*** at 130. The Court then proceeded to apply the actual malice standard to the Tuckers' claims in order to determine whether, assuming the allegations in the complaint were true, to remand for further proceedings or dismiss the case. ***Id.*** at 130-136. The Court summarized the Tuckers' arguments on this point:

> Essentially, the Tuckers claim that, notwithstanding that the Complaint in ***Tucker II*** alleged a loss of consortium claim, [defendant-newspapers] knew that the Tuckers were not seeking damages for loss of their

> sexual relationship or printed the statement with reckless disregard of its falsity. Specifically, they contend that they can prove actual malice because the Tuckers' attorney purportedly told some of the newspapers that the Tuckers were not suing for loss of sexual relations and [defendant-newspapers] recklessly disregarded this warning and published their interpretation anyway. The Tuckers also claim that [defendant-newspapers] acted with reckless disregard of the truth because some of them allegedly: (a) failed to rely on the best sources; (b) relied upon the biased statement of the attorney for the Estate of Shakur; (c) failed to research the background of the Tuckers; (d) ignored the Tuckers' press release regarding ***Tucker II;*** and/or (e) failed to properly investigate the facts of the article. The Tuckers, therefore, contend that they have set forth sufficient allegations of actual malice to avoid judgment on the pleadings.

Id. at 131 (citations to Reproduced Record omitted). The Court addressed these arguments as per the following excerpt, included here because it is essential in understanding the Court's reasoning in ultimately permitting the Tuckers to file an amended complaint, on a limited basis, upon remand:

> Several of the Tuckers' allegations are based upon an incorrect understanding of the articles the [defendant-newspapers] published. For example, the Tuckers contend that the [defendant-newspapers] showed actual malice by describing the ***Tucker II*** Complaint as one in which the Tuckers: (1) only sued the Shakur Estate, and (2) were seeking $10 million only because lewd lyrics destroyed their sex life. However, neither the *Philadelphia Daily News* nor the *Legal Intelligencer* made either of these statements. The *Philadelphia Daily News* article makes it clear it did not allege that the Tuck-

ers only sued Mr. Shakur. Indeed, it quoted the Tuckers' attorney as stating that the Tuckers also sued the companies that produce, distribute, and sell the subject records. Similarly, the *Legal Intelligencer* article made it clear that "[t]he suit also names Shakur's Wife, Afeni, Death Row Records, Interscope Records, Time Warner, Seagram Co., Tower Records and seven other people and entities as defendants."

The Tuckers' next allegation that [defendant-newspapers] stated that the Tuckers "were seeking $10 million only because lewd lyrics destroyed [their] sex life" is also not correct. Both [defendant-newspapers] pointed out that the Tuckers were suing for other things, too. The *Philadelphia Daily News* article stated that Mrs. Tucker suffered mental anguish, great humiliation, and mental pain and suffering, and that she was suing, in part, "to stop the production and distribution of gangsta rap to 'impressionable youth, because it tends to corrupt the morals of minors.'" The article reported that Mrs. Tucker alleged that she was slandered and that she "has reasonable fear for her life because violence and death play a central role in the gangsta rap arena." Although the *Legal Intelligencer* article did not give as many details about the other relief sought by the Tuckers, it stated that the lawsuit sought relief for other things, including damages for "humiliation, mental pain and suffering" because of the lyrics of the songs on the "All Eyez on Me" album.

The Tuckers also contend that the purported failure of [defendant-newspapers] to consider the Tuckers' press release was evidence of actual malice. [Defendant-newspapers] properly demurred to this statement. The Tuckers cannot prove actual malice based on their belief that [defendant-newspapers] should have paid more

attention to the Tuckers' press release especially where the release did not deny that the Tuckers sought damages for diminished sexual relations. Indeed, the press release stated that Mrs. Tucker's "husband, William, a well known businessman, joins her as a plaintiff in the suit." The press release did nothing to dispel the belief of [defendant-newspapers] that the loss of consortium claim included a claim for loss of sexual relations.

The Tuckers further allege that the newspapers demonstrated actual malice by mischaracterizing the Complaint by emphasizing the sexual "spin" of Richard Fischbein. We do not find any basis from which a jury could conclude that [defendant-newspapers] acted recklessly or in knowing disregard of the truth in reliance on the statement of Mr. Fischbein. In fact, the newspapers acted reasonably in quoting Mr. Fischbein. As an attorney and the executor of the Estate of Shakur, he is an entirely appropriate person for the newspapers to have interviewed. He was not an unreliable source and reliance upon him is not evidence of actual malice. Additionally, the emphasis on the "spin" of Mr. Fischbein to attract some of the more prurient interests of the public is not defamatory. "An action for defamation cannot be premised solely on defendant's style or utilization of vivid words in reporting a judicial proceeding .... [an article does not become actionable] by reason of the alleged 'flippant' and 'smart alecky' style of writing which was utilized ... to create reader interest." Although an article is not made defamatory by being unfair, the *Philadelphia Daily News* acted in an even handed manner by extensively quoting the attorney for the Tuckers in response to the comments of Mr. Fischbein.

Similarly, despite the fact that the *Legal Intelligencer* did not quote the Tuckers' attorney, it, too, was entitled to rely on the statements of Mr. Fischbein and the definition of the word "consortium." The *Legal Intelligencer* did report that "Mrs. Tucker, who is asking for $10 million in the suit, could not be reached for comment Thursday[,]" implicitly advising the reader that there may be another perspective to this story. Apparently, the *Legal Intelligencer* did not have the benefit of an interview with Mrs. Tucker, so it relied upon the Complaint and the other sources available. The fact that the newspapers did not interview Mrs. Tucker does not mean that they knew that the statement of Mr. Fischbein was false, nor does it create the inference that [defendant-newspapers] had "obvious reasons to doubt the veracity" of his statements, especially where the ***Tucker II*** Complaint appeared to validate them.

Next, the Tuckers allege that:

Only a few of the Defendants contacted Plaintiffs' law firm, which attorneys drafted the complaint, and the few defendants who did contact Plaintiffs' law firm misrepresented the complaint even after talking with Plaintiffs' counsel and after being advised that consortium counts *can* include a claim for damage to one's sexual life, but no such claim was being made by the Tuckers.

This is a problematic allegation for [defendant-newspapers] because, to the extent that they were told that the Tuckers' loss of consortium claim did not include a claim for damage to the Tuckers' sexual relationship or recklessly disregarded that fact, it would be possible for a jury to conclude that [defendant-newspapers] printed the article with actual malice. The plaintiff is the master of his claim. If the plaintiff unequivocally denies that he or she is making a claim, and that

> information is communicated to a newspaper, the fact that the newspaper stated that the plaintiff was making such a claim could be evidence of actual malice.

Id. at 131-133 (case citations, footnotes, and citations to Reproduced Record omitted). The Court proceeded to note that in another case involving similar issues that the Tuckers filed against *Time* and *Newsweek* in federal court (dubbed ***Tucker III,*** by the Court), the Tuckers' attorney, when asked what he said to the *Newsweek* reporter to put that reporter on notice that the Tuckers' claim did not involve impairment of sexual relations, the Tuckers' attorney replied, "I said only in the rarest of cases would you have a count that actually involves sex. *I'm under oath, so I cannot say to you that I said specifically, this case does not involve sex.*" ***Id.*** at 133 (quoting ***Tucker v. Fischbein,*** 237 F.3d 275, 286 (3d Cir. 2001)). The Court noted that the *Newsweek* article was published on August 20, 1997, *i.e.*, sixteen to eighteen days after the articles in the instant case. ***Id.*** The Court stated, "[a]ccordingly, it appears that, if Mr. Angino could not state under oath that he told the *Newsweek* reporter that the ***Tucker II*** Complaint did not involve a claim of loss of sexual relations, it is unclear whether he told [defendant-newspapers] in this case." ***Id.*** at 134 (footnote omitted). The Court recognized further that the complaint in this case is ambiguous in that it alleges that Mr. Angino told "a few" of the defendants that the ***Tucker II*** complaint did not include a loss of sexual relations claim. ***Id.*** The Court found the complaint insufficiently specific, and therefore in violation of Pa.R.C.P. 1028(a)(3), because it was not clear whether "the allegation of knowledge relate[d] to these [defendant-newspapers]." ***Id.***

The preceding analysis resulted in the following directive, whereby the Court granted the Tuckers leave to replead on the following limited basis: "The Tuckers are granted leave

to replead only to the extent they are able to allege that, before [defendant-newspapers] printed the articles, the Tuckers or their representative unequivocally told [defendant-newspapers] that their loss of consortium claim did not include a claim that the lyrics damaged their sex lives." ***Id.*** at 136. The Court continued, "[i]n the event that the Tuckers are able to allege notice to [defendant-newspapers], the Tuckers will have stated a cause of action [for defamation]." **Id.**

Following remand, the Tuckers amended their complaint in an effort to comport with the Court's mandate and save their defamation suit. However, the trial court again concluded that the complaint failed to state a cause of action in defamation, granted the defendant-newspapers' preliminary objections, and dismissed the complaint. Accordingly, the Tuckers' filed the instant appeal in which they argue that the trial court erred because the new averments in their amended complaint sufficiently pled actual malice on the part of defendant-newspapers. For the following reasons, we conclude that the trial court did not err.

We first note as follows:

> Our scope and standard of review of a challenge to an order that has sustained preliminary objections is well settled:
>
> In determining whether the trial court properly sustained preliminary objections, the appellate court must examine the averments in the complaint, together with the documents and exhibits attached thereto, in order to evaluate the sufficiency of the facts averred. The impetus of our inquiry is to determine the legal sufficiency of the complaint and whether the pleading would permit recovery if ultimately proven. This Court will reverse the trial court's decision regarding preliminary objections only where there has been an error of law or abuse of discretion. When sustaining the trial court's ruling

> will result in the denial of claim or a dismissal of suit, preliminary objections will be sustained only where the case is free and clear of doubt.
>
> ***Brosovic v. Nationwide Mutual Insurance Co.,*** 841 A.2d 1071, 1073 (Pa. Super. 2004) (citation omitted).

Wentzel-Applewood Joint Venture v. 801 Market St. Assoc., LP, 878 A.2d 889, 892 (Pa. Super. 2005). However, because this appeal involves a remand from our Supreme Court, who indicated specifically the manner in which the Tuckers must amend their complaint to sustain their defamation claim, we note the following: "On remand of the record the court or other government unit below shall proceed in accordance with the judgment or other order of the appellate court... ." Pa.R.A.P. 2591(a).

The new averment in the amended complaint that comes closest to what the Supreme Court indicated was necessary for the Tuckers to proceed with their suit reads as follows: "The reporter for the *Philadelphia Daily News* talked to Plaintiffs' counsel, Richard C. Angino, who answered his questions and explained the basis of the Tuckers' Complaint, which did not involve the Tuckers' sex life." Amended Complaint, 8/16/04, at ¶ 49. However, this averment does not "allege that, before [defendant-newspapers] printed the articles, the Tuckers or their representative unequivocally told [defendant-newspapers] that their loss of consortium claim did not include a claim that the lyrics damaged their sex lives." ***Tucker,*** 848 A.2d at 136. Although paragraph 49 indicates that Attorney Angino answered the reporter's questions and explained the basis of the Tucker's complaint, it does not indicate, unequivocally, that Attorney Angino told the reporter that the Tuckers' loss of consortium claim did not include a claim that the lyrics damaged their sex lives. Also, the phrase in paragraph 49 stating "which did not involve the Tuckers'

sex life" is at the end of the sentence, set-off by a comma, following the word "Complaint," thereby leaving the impression only that the *Complaint* did not "involve the Tuckers' sex life," not that Attorney Angino told the reporter that the Complaint did not involve the Tuckers' sex life. Accordingly, we cannot conclude, based on the wording of paragraph 49, that the Tuckers' or their representative unequivocally told the defendant-newspapers that their July 21, 1997 lawsuit did not involve a claim of damage to their sex life. None of the other averments in the amended complaint state unequivocally that Attorney Angino told reporters that the ***Tucker II*** suit did not involve a claim of impairment to their sexual relationship. As the trial court aptly recognized, in their amended complaint, the Tuckers' "merely reiterated the same allegations that had previously been found insufficient by the Supreme Court, alleging that the defendant-newspapers 'should have known' or were 'reckless in not knowing' that the Tuckers were not claiming harm to their sex lives." Trial Court Opinion, 2/22/05, at 4. We agree with that assessment.

For the foregoing reasons, we affirm the orders dated December 13, 2004 (and docketed on December 15, 2004), which granted the defendant-newspapers' preliminary objections and dismissed the complaint.

Orders affirmed.

Judgment Entered.

/s/Illegible

Prothonotary

Date: OCT 25 2005

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IN THE COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY FIRST JUDICIAL
DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

C. DELORES TUCKER and WILLIAM TUCKER
v.
PHILADELPHIA DAILY NEWS; PHILADELPHIA NEWSPAPERS, INC., KNIGHT-RIDDER, INC.; SPORTS & ENTERTAINMENT LITIGATIION [sic] REPORTER; ANDREWS PUBLICATIONS INC.; LEGAL COMMUNICATIONS, LTD.; THE LEGAL INTELLIGENCER; MERIDIAN VENTURE PARTNERS LP; BASELINE II, INC.; and THE ENTERTAINMENT LITIGATION REPORTER

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY
JULY TERM, 1998,
NO. 3644

OPINION

Appellants, C. Delores Tucker and William Tucker ("the Tuckers"), appeal from this Court's Orders of December 13, 2004 sustaining the defendant-newspapers' Preliminary Objections in the nature of a demurrer, and dismissing Appellants' Amended Complaint without prejudice.

Factual and Procedural History

Appellant C. Delores Tucker, a well known public figure, led a high-profile campaign against "gangsta" rap music from 1993 to 1997. In February of 1996, deceased rapper Tupac Shakur put out an album called "All Eyez on Me". The album included songs entitled "Wonda Why They Call U Bitch" and "How Do U Want It", written in response to Mrs. Tucker's attack on gangsta rap. On July 21, 1997, the Tuckers filed a lawsuit against the Estate of Tupac Shakur and others associated with the production, distribution and sale of his music, alleging that the lyrics in these two songs defamed Mrs. Tucker and caused her to suffer severe emotional distress. Also included in the suit was a claim by Mr. Tucker for loss of consortium.

On August 2, 1997, the Daily News wrote an article about the lawsuit in which Richard Fischbein, who represented Shakur's estate in the Tuckers' action, was quoted as stating, "It's hard for me to conceive how these lyrics could destroy her sex life ... But we can only wait for the proof to be revealed in court." On August 4, 1997, the Legal Intelligencer published an article entitled "Gangsta Rap Critic Sues Shakur Estate for Album's Derogatory References" which also quoted Fischbein's statement. Subsequently, on July 29, 1998, the Tuckers commenced the instant action against the defendant-newspapers, alleging that they had defamed the Tuckers by interpreting the loss of consortium claim to include a claim for damages to the couple's sexual relationship.

On June 16, 1999, the Honorable Flora B. Wolf issued an Order sustaining the preliminary objections filed by the defendant-newspapers and dismissing the Tuckers' Complaint, holding, *inter alia*, that the Tuckers had failed to plead facts that would show that they acted with actual malice in publishing the articles. The Tuckers appealed, and the Penn-

sylvania Superior Court reversed and remanded, finding that the Tuckers had adequately pled malice. However, in an Opinion and Order issued on April 29, 2004, the Pennsylvania Supreme Court reversed the Superior Court's decision on actual malice, pointing out that "the definition of consortium includes a claim for the damage to the sexual relationship of a married couple. Tucker v. Philadelphia Daily News, 848 A.2d 113, 127 (Pa. 2004). Further, after rejecting each of the Tuckers' theories concerning the existence of actual malice, the Supreme Court specifically delineated what the Tuckers must plead in order to allege malice:

> ... Here we do not know whether the attorney for the Tuckers claims to have actually told Appellant-newspapers that the loss of consortium claim did not include a loss of sexual relations allegation and we are unable to conclude that he did based upon the current pleading. However, in the event that the Tuckers are able to show that they unequivocally communicated the foregoing information to Appellant-newspapers, the Tuckers would have stated a viable cause of action. *See Curtis Publishing*, 388 U.S. at 169-170, 87 S.Ct. 1975 (observing that where "little investigative effort was expended initially, and no additional inquiries were made even after the editors were notified by respondent and his daughter that the account, to be published was absolutely untrue [and i]nstead the [newspaper] proceeded on its reckless course with full knowledge of the harm that would likely result from publication of the article ... [the evidence discloses] ... [a] reckless disregard for the truth..."). However, because the pleading is impermissibly vague, **we dismiss it with leave to replead only in the event that the Tuckers are able to allege, in good faith, that their attorney unequivocally told these specific Appellant-newspapers that the loss of consortium**

claim did not include a claim for loss of sexual relations.

Id. at 135. (emphasis added).

The Tuckers filed an Amended Complaint on August 16, 2004, to which the defendant-newspapers again filed Preliminary Objections in the nature of a demurrer. On December 13, 2004 this Court sustained the Preliminary Objections and dismissed the Tuckers' Amended Complaint without prejudice. The Tuckers filed a Notice of Appeal on January 5, 2005, and filed a 1925(b) Statement of Matters Complained of on Appeal on January 21, 2005.

Legal Discussion

Preliminary Objections in the nature of a demurrer test the legal sufficiency of a complaint. Sexton v. PNC Bank, 792 A.2d 602, 604 (Pa.Super. 2002). After accepting as true all factual allegations that are well plead, preliminary objections will be sustained where the allegations, even if proven, would fail to vest the plaintiff with a right to relief. Id. at 604. To prevail on a defamation claim, the Tuckers, as public figures, must prove actual malice by clear and convincing evidence. Ertel v. Patriot-News Company, 544 Pa. 93, 674 A.2d 1038 (1996).

Here, the Pennsylvania Supreme Court has held that, in order to satisfy the requirement of pleading malice, the Tuckers must allege that a specific, unequivocal statement was made to the defendant-newspapers prior to the publication of the articles in question, advising them that the Tuckers' claims did not include a claim for harm to their sexual relations. No such factual allegations were pled in the Amended Complaint however. Instead, the Tuckers merely reiterated the same allegations that had previously been found insufficient by the Supreme Court, alleging that the defendant-newspapers "should have known" or were "reck-

less in not knowing" that the Tuckers were not claiming harm to their sex lives. Accordingly, this Court properly sustained the defendant-newspapers' Preliminary Objections on grounds that the Amended Complaint had failed to set forth a cause of action.

In view of the foregoing, it is the opinion of this Court that its Orders sustaining the defendant-newspapers' Preliminary Objections and dismissing the Tuckers' Amended Complaint should be affirmed.

BY THE COURT,

/s/Esther R. Sylvester

HONORABLE ESTHER R. SYLVESTER

DATED: Feb 22, 2005

14180-02419
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COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

JULY TERM, 1998
NO. 003644

C. DELORES TUCKER and WILLIAM TUCKER
v.
LEGAL COMMUNICATIONS, LTD., and
THE LEGAL INTELLIGENCER.

ORDER

And now, this 13 day of Dec, 2004, upon consideration of the preliminary objections in the nature of a demurrer of defendants, Legal Communications, Ltd. and the Legal Intelligencer, the decision in Tucker v. The Daily News, et al, 848 A.2d 113 (Pa. 2004) and the response of plaintiffs, it is ORDERED that the preliminary objections are SUSTAINED. It is FURTHER ORDERED that this action is DISMISSED against these defendants, without prejudice.

/s/E.R. Sylvester, J.

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COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

JULY TERM 1998
NO. 003644

C. DELORES TUCKER and WILLIAM TUCKER,
her husband

Plaintiffs

v.

PHILADELPHIA DAILY NEWS; PHILADELPHIA NEWSPAPERS, INC., et al.

Defendants.

ORDER

AND NOW, this 13 day of Dec., 2004, after consideration of the preliminary objections of defendants Philadelphia Daily News, Philadelphia Newspapers, Inc. and Knight Ridder, Inc., and any response thereto, IT IS HEREBY ORDERED, that the preliminary objections are SUSTAINED and the plaintiffs' Amended Complaint is DISMISSED WITHOUT PREJUDICE.

/s/E.R. Sylvester, J.

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Westlaw [Printed from http://print.westlaw.com]
848 A.2d 113
577 Pa. 598, 848 A2d 113, 32 Media L Rep. 1705
(Cite as: 577 Pa. 598, 848 A.2d 113)

H

Briefs and Other Related Documents

Supreme Court of Pennsylvania.
C. Delores TUCKER and William Tucker, her Husband,
v.
PHILADELPHIA DAILY NEWS, Phila. Newspapers, Inc.; Knight-Ridder, Inc.; Sports & Entertainment Litigation Reporter; Andrews Publications, Inc.; Legal Communication, Ltd.; Legal Intelligencer; Meridian Venture Partners, L.P.; Baseline II, Inc.; and the Entertainment Litigation Reporter.
Appeal of Phila. Daily News, Phila. Newspapers, Inc.; Knight-Ridder, Inc.; Legal Communications, Ltd.; Legal Intelligencer.

Argued Oct. 21, 2002.
Decided April 29, 2004.
Reargument Denied June 30, 2004.

Background: Well-known black activist and her husband, who had sued record company and "gangsta rap" musician's estate for loss of consortium, among other claims, after singer included derogatory lyrics about activist on his album, brought defamation complaint against newspaper and other publishing entities, based on their heavy emphasis of the loss of sexual relations aspect of their loss of consortium claim. The Court of Common Pleas, Philadelphia County, Civil Division, No. 003644 July Term, 1998, Wolf, J., sustained newspaper's and

publishing entities' preliminary objections in the nature of a demurrer and dismissed the defamation complaint. Activist and her husband appealed. The Superior Court, No. 2121 EDA 1999, 757 A.2d 938, reversed and remanded.

Holdings: On grant of newspaper's and other entities' petition for allowance of leave to appeal, the Supreme Court, No. 47 EAP 2001, Newman, J., held that:

(1) statements in newspaper articles that activist and her husband sued musician's estate to recover $10,000,000 for loss of sexual relations as a result of lyrics of two songs were capable of a defamatory meaning;

(2) reasonable jury could not have concluded by clear and convincing evidence that newspapers and other publishing entities printed statements with actual malice;

(3) complaint was insufficiently specific to meet pleading requirements; and

(4) failure of newspaper and other publishing entities to ask activist, her husband, or their attorney directly whether their loss of consortium claim included a claim for damage to their sexual relationship was not actual malice.

Affirmed in part and reversed in part; complaint dismissed.

Saylor, J., filed a concurring opinion.

Nigro, J., filed an opinion concurring in part and dissenting in part, in which Saylor, J., joined.

West Headnotes

[1] Judgment (KEY) 715(1)

228k715(1) Most Cited Cases

Absent showing that statements in magazine articles that were subject of prior defamation action were the same as newspaper articles that were subject of current defamation action or that circumstances surrounding publication of articles were the same, doctrine of issue preclusion did not bar current defamation claims asserted by well-known black ac-

tivist and her husband, who had sued record company and "gangsta rap" musician's estate after singer included derogatory lyrics about activist on his album, against newspaper and other publishing entities, based on their heavy emphasis of loss of sexual relations aspect of loss of consortium claim.

[2] Libel and Slander (KEY) 6(1)

237k6(1) Most Cited Cases

Statements in newspaper articles, that well-known black activist and her husband sued "gangsta rap" musician's estate to recover $10,000,000 for loss of sexual relations as a result of lyrics of two songs, were capable of a defamatory meaning; statements could have made activist and her husband seem overly interested in money or sex, and not concerned with their life work of fighting for civil rights, and, as a result, could have held activist and her husband out for ridicule in the world.

[3] Libel and Slander (KEY) 123(2)

237k123(2) Most Cited Cases

It is the function of the court to determine whether the challenged publication is capable of a defamatory meaning.

[4] Libel and Slander (KEY) 123(2)

237k123(2) Most Cited Cases

If the court determines that the challenged publication is not capable of a defamatory meaning, there is no basis for the matter to proceed to trial.

[5] Libel and Slander (KEY) 6(1)

237k6(1) Most Cited Cases

To determine whether a statement is capable of a defamatory meaning, the Supreme Court considers whether the statement tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third parties from associating or dealing with him.

[6] Libel and Slander (KEY) 1
237k1 Most Cited Cases

"Libel" is the malicious publication of printed or written matter which tends to blacken a person's reputation and expose him to public hatred, contempt, or ridicule.

[7] Libel and Slander (KEY) 19
237k19 Most Cited Cases

A court must view allegedly defamatory statements in context.

[8] Libel and Slander (KEY) 19
237k19 Most Cited Cases

Words which standing alone may reasonably be understood as defamatory may be so explained or qualified by their context as to make such an interpretation unreasonable; thus, the court must consider the full context of the article to determine the effect the article is fairly calculated to produce, the impression it would naturally engender, in the minds of the average persons among whom it is intended to circulate.

[9] Libel and Slander (KEY) 32
237k32 Most Cited Cases

It is not enough that the victim of allegedly defamatory statements be embarrassed or annoyed; he must have suffered the kind of harm which has grievously fractured his standing in the community of respectable society.

[10] Husband and Wife (KEY) 209(3)
205k209(3) Most Cited Cases

[10] Husband and Wife (KEY) 209(4)
205k209(4) Most Cited Cases

A claim for loss of consortium arises from the marital relationship and is based on the loss of a spouse's services resulting from an injury.

[11] Libel and Slander (KEY) 51(5)
237k51(5) Most Cited Cases

[11] Libel and Slander (KEY) 112(2)
237k112(2) Most Cited Cases

To prevail on their defamation claim, well-known black activist and her husband, being public figures, were required to prove, by clear and convincing evidence that the allegedly defamatory statements were false and that newspapers either knew they were false or recklessly disregarded their falsity.

[12] Libel and Slander (KEY) 112(2)
237k112(2) Most Cited Cases

Reasonable jury could not have concluded by clear and convincing evidence that newspapers and other publishing entities printed statements, that well-known black activist and her husband sued "gangsta rap" musician's estate to recover $10,000,000 for loss of sexual relations as a result of lyrics of two songs, with actual malice; articles accurately described all defendants in underlying action and identified claims asserted and relief sought, activist's press release, which newspaper allegedly disregarded, did nothing to dispel belief that loss of consortium claim included claim for loss of sexual relations, and newspaper could rely on statements of estate's attorney and definition of "consortium."

[13] Libel and Slander (KEY) 112(2)
237k112(2) Most Cited Cases

[13] Libel and Slander (KEY) 123(8)
237k123(8) Most Cited Cases

The requirement that a public figure bringing a defamation action be able to show actual malice by clear and convincing evidence is initially a matter of law; the question whether the evidence in the record in a defamation case is sufficient to support a finding of actual malice is a question of law.

[14] Appeal and Error (KEY) 916(1)
30k916(1) Most Cited Cases

The standard to be applied upon review of a motion for judgment on the pleadings accepts all well-pleaded allegations of the complaint as true.

[15] Pleading (KEY) 193(5)
302k193(5) Most Cited Cases
[15] Pleading (KEY) 218(1)
302k218(1) Most Cited Cases

The question presented by demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible; where a doubt exists as to whether a demurrer should be sustained, this doubt should be resolved in favor of overruling it.

[16] Libel and Slander (KEY) 83
237k83 Most Cited Cases

Complaint, alleging that attorney representing well-known black activist and her husband in action against record company and "gangsta rap" musician's estate for loss of consortium, among other claims, after singer included derogatory lyrics about activist on his album, told "a few" of publishing entities that underlying complaint did not include a loss of sexual relations claim, was insufficiently specific to meet the pleading requirements for a defamation action; it was not clear that allegation of knowledge related to entities who were defendants in defamation action. Rules Civ.Proc., Rule 1028(a)(3).

[17] Libel and Slander (KEY) 51(5)
237k51(5) Most Cited Cases

Failure of newspaper and other publishing entities to ask well-known black activist, her husband, or their attorney directly whether their loss of consortium claim included a claim for damage to their sexual relationship or to do research

into backgrounds of activist and husband, including their ages, years of marriage, religious and moral upbringing, and their emphasis on privacy was not actual malice required for public figures, such as activist and her husband, to maintain defamation action based on statements that activist and her husband sued "gangsta rap" musician's estate to recover $10,000,000 for loss of sexual relations as a result of lyrics of two songs.

[18] Libel and Slander (KEY) 51(1)

237k51(1) Most Cited Cases

A showing of a "reckless disregard" for the truth, in the context of actual malice in a defamation action, requires more than a departure from reasonably prudent conduct.

[19] Libel and Slander (KEY) 51(1)

237k51(1) Most Cited Cases

Failure to check sources, or negligence alone, is simply insufficient to maintain a cause of action for defamation.

[20] Libel and Slander (KEY) 51(5)

237k51(5) Most Cited Cases

of

Recklessness generally and in the context of actual malice required for a public figure to maintain a defamation action is not easily shown; while recklessness may be found where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports it simply cannot be concluded that a defendant entertained the requisite doubt as to the veracity of the challenged publication where the publication was based on information a defendant could reasonably believe to be accurate.

**116 *603 Michael E. Baughman, Esq., Robert C. Heim, Esq., Amy B. Ginensky, Esq., for Phil. Daily News; Phila. News Papers, Inc.; Night-Ridder, Inc.

James William Gicking, Esq., Jonathan F. Ball, Esq., for Legal Intelligencer; Legal Communications, LTD.

Richard C. Angino, Esq., for C. Delores Tucker and William Tucker.

Before: ZAPPALA, C.J., and CAPPY, CASTILLE, NIGRO, NEWMAN, SAYLOR and EAKIN, JJ.

****117 *OPINION***

Justice NEWMAN.

Today, we consider the extent to which Pennsylvania libel law can permissibly restrict the free expression rights [FN1] of ***604** Appellant-newspapers [FN2] to print what they deem appropriate. The issues presented force us to examine when a statement is capable of a defamatory meaning and to set forth the boundaries demarcating where concern for the protection of the reputations [FN3] of public figures in Pennsylvania must yield to the need for an open discussion of their involvement in public *605 affairs. "In cases where that line must be drawn, the rule is that we examine for ourselves the statements in issue and the circumstances under which they were made to see ... whether they are of a character which the principles of the First Amendment, as adopted by the Due Process Clause of the Fourteenth Amendment, protect." *New York Times Co. v. Sullivan*, 376 U.S. 254, 285, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964) (internal citations and quotations omitted). To that end, we begin by reviewing the facts and procedural history of this case.

FN1. The First Amendment to the Constitution of the United States provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble,

and to petition the Government for a redress of grievances.

U.S. CONST. amend. I (applied to the states by U.S. CONST. amend. XIV, § 1). The Constitution of the Commonwealth of Pennsylvania provides, in pertinent part:

The printing press shall be free to every person who may undertake to examine the proceedings of the Legislature or any branch of government, and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty.

Pa. Const. Art. I, Section 7.

FN2. For ease of discussion, we refer to the *Philadelphia Daily News,* Philadelphia Newspapers, Inc., Knight-Ridder, Inc., *Legal Communications, Ltd.,* and the *Legal Intelligencer* collectively as Appellant-newspapers. On February 5, 1999, C. Delores Tucker and her husband, William Tucker (hereinafter, "the Tuckers") discontinued their actions as against Andres Publications, Inc., the *Sports & Entertainment Litigation Reporter,* and the *Entertainment Litigation Reporter.* (Reproduced Record (R.R.) R.R. 109a 112a). The Tuckers also discontinued their action as against defendant Meridian Venture Partners, L.P. (R.R. 113a.) The *Philadelphia Daily News* and the *Legal Intelligencer* published articles at issue in this appeal. It appears that Philadelphia Newspapers, Inc., Knight-Ridder Inc., and Legal Communications, Ltd. are named Appellant because they are affiliated with the *Philadelphia Daily News*

or the *Legal Intelligencer* and not because they published separate articles about Mrs. Tucker's lawsuit.

FN3. Recently, the U.S. Supreme Court poignantly summarized the importance of the interests protected by state defamation law with a quote from Shakespeare's *Othello:*

Good name in man and woman, dear my lord, Is the immediate jewel of their souls. Who steals my purse steals trash; 'Tis something, nothing; 'Twas mine, 'tis his, and has been slave to thousands; But he that filches from me my good name Robs me of that which not enriches him, And makes me poor indeed.

Milkovich v. Lorain Journal Co., 497 U.S. 1, 12, 110 S.Ct. 2695, 111 L.Ed.2d 1 (1990) (quoting WILLIAM SHAKESPEARE, OTHELLO act III, sc. 3); *Kernick v. Dardanell Press,* 428 Pa. 288, 236 A.2d 191, 193 (1967) (citing same quote in the context of a defamation action but pointing out that: "The law stands as a guardian to protect a man's good name earned in the heat of battle, in the sweat of work, and in the laboratory of conscience, but it cannot prescribe hospitalization for abrasions or order surgery for a hiccough.").

Facts and Procedural History

Appellee C. Delores Tucker (Mrs. Tucker) ****118** is a well-known public figure [FN4] who, from 1993 through 1997, led a high-profile "crusade" against "gangsta rap" music. R.R. 26a, R.R. 62a. Mrs. Tucker's campaign is undeniably one of public concern.

FN4. According to her Complaint in this case, Mrs. Tucker has served as: the Secretary of State of the Commonwealth of Pennsylvania; the Chair of the National Political Congress of Black Women, Inc.; the Chair of

the Democratic National Committee Black Caucus; President of the Martin Luther King Jr. Association for Non Violent Change; President of the National Federation of Democratic Women; member of the NAACP SCF Board of Trustees; and a member of the boards of directors of three Pennsylvania colleges. (R.R. 23a-24a.)

In February of 1996, Interscope Records distributed the album "All Eyez on Me," in which deceased rapper Tupac Shakur responded to Mrs. Tucker's "attack" [FN5] on gangsta-rap with the songs "Wonda Why They Call U Bitch" and "How Do U Want It." [FN6] The lyrics conjure images of prostitution, and ***606** assert that Mrs. Tucker was only interested in money and had sold-out black interests to white politicians.

FN5. In the instant defamation action against Appellant-newspapers, Mrs. Tucker alleged that her lawsuit against the record industry "attacks the words in 'All Eyez on Me'" and "attacks the corporate and business Defendants for bankrolling and getting rich from gangsta rap generally, and 'All Eyez On Me' particularly." (R.R. 32a.)

FN6. The Daily News quoted the following portions of the lyrics of those songs as follows:

Wonda Why They Call U Bitch

"Wonda why they call U b--
Dear Ms. De[L]ores Tucker
Keep stressen me
f—with a muthaf—mind
I figured you wanted to know
You know
Why we call them hos b--
And maybe this might help you understand It ain't personal

Strictly business baby
Strictly business
So If you wonder why we call U b--
You wonder why we call U b--
How Do U Want It
De[L]ores Tucker
You's a muthaf--
Instead of tryin' to help a ni--
You destroy a brotha
Worst than tha others
Bill Clinton
Mr. Bob Dole
You too old to understand tha
way tha game is told
you're lame
So I gotta hit you with tha high facts
Won't someone listen?
Makin' millions
ni--, top that
They wanna censor me They ratha see me in a cell
Livin' in hell
With only a few of us to live to tell
Now everybody talken about us
I could give a f--
I'd be tha first one to bomb and cuss
Ni--, tell me how you want it."
(R.R. 44a (editing in original).)

On July 21, 1997, Mrs. Tucker and her, husband, William Tucker [FN7] (hereinafter the "Tuckers") filed suit against the Estate of Tupac Shakur [FN8] and entities associated with the production, distribution, and sale of his music in the United States District Court for the Eastern District of Pennsylvania. *Tucker v. MTS, Inc. t/a Tower Records et*

al., No. 97 CV 4717 (E.D.Pa. filed July 21, 1997) (hereinafter, *Tucker II*). [FN9] The *607 *Tucker II* Complaint alleged **119 that the production, distribution, and sale of records including "All Eyez on Me," caused Mrs. Tucker to fear for her life and suffer emotional distress. Mrs. Tucker demanded damages in an amount exceeding $10,000,000.00. [FN10] Additionally, in paragraph fifty of the *Tucker II* Complaint, Mr. Tucker claimed that "as a result of his wife's injuries, [he] suffered a loss of advice, companionship and consortium." (R.R. 64a.)

FN7. The Tuckers issued a July 31, 1997 press release describing Mr. Tucker as a "well-known businessman."

FN8. According to the August 4, 1997 Legal Intelligencer article, Mr. "Shakur was shot as he rode in a car near the Las Vegas Strip Sept. 7. He died six days later at a local hospital."

FN9. The dispute between the parties did not begin with this case. Indeed, since August 1995, the parties have filed several actions against one another. The first legal salvo was fired by Interscope Records and alleged, *inter alia*, that Mrs. Tucker's anti gangsta-rap activities induced a breach of contract between Death Row Records and Interscope. *Interscope Records v. Tucker*, 95 CV 5444 (C.D.Cal.1995) (hereinafter, *Tucker I*). After the District Court dismissed the contractual interference claim, Interscope and Death Row voluntarily discontinued the action. The Tuckers then commenced *Tucker II* against record industry entities.

FN10. The claims in *Tucker II* were also eventually dismissed. *Tucker II, aff'd*, 229 F.3d 1139, No. 99-1169 (3d Cir. filed July 17, 2000) (dismissing case as to all defendants except the Estate of Shakur on statute of limi-

tations grounds and dismissing claims against the Estate because lyrics were expressions of opinion and not defamatory).

On July 31, 1997, Mrs. Tucker issued a press release explaining that she filed the Complaint in *Tucker II,* which she described as "a multi-million dollar suit directed at the heart of the gangsta rap music in the US[sic]." (R.R. 72a.) The press release indicated that Mrs. Tucker had received death threats and that she would continue to fight against gangsta rap music in spite of them because she was "even more concerned about the many, many young lives that have already been lost needlessly and the little children who will be lost if [she did] not say ... to this industry—'STOP NOW.' " (R.R. 73a.) The press release also notes, without further explanation, that Mrs. Tucker's "husband, William, a well known businessman, joins her as a plaintiff in the suit." *Id.*

[1] The case before us arose because the Tuckers claim to have been defamed by the way in which several newspapers reported on *Tucker II.* Specifically, on July 29, 1998, the Tuckers commenced the current action (hereinafter, *Tucker IV* [FN11]) ****120** against Appellant-newspapers alleging that they had ***608** defamed the Tuckers since they interpreted the loss of consortium claim in *Tucker II* to include a claim for damage to the sexual relationship between the Tuckers.

FN11. The Tuckers also sued *Newsweek, Time,* and the attorney for the Estate of Shakur, whom *Newsweek* and *Time* quoted in their articles. The *Newsweek* and *Time* articles, like the articles that are the subject of the case at bar, reported on the Tuckers' claims, including the loss of consortium claim, against the record industry. *Tucker v. Fischbein,* 97 CV-6150 (E.D.Pa.1997) (hereinafter, *Tucker III*) (*Tucker v. Fischbein,* 1999 WL

124355 (E.D.Pa.1999) (granting summary judgment in favor of all defendants)), *aff'd in part and rev'd in part,* 237 F.3d 275 (3d Cir.2001) (affirming the grant of summary judgment with regard to the media defendants finding that the Tuckers had failed to prove actual malice but reversing and remanding for further proceedings with regard to claims against Mr. Fischbein).

We question whether the doctrine of collateral estoppel, also known as issue preclusion, bars the Tuckers from relitigating the claims before this Court that the federal courts disposed of in *Tucker III.* We have explained that:

a plea of collateral estoppel is valid if, 1) the issue decided in the prior adjudication was identical with the one presented in the later action, 2) there was a final judgment on the merits, 3) the party against whom the plea is asserted was a party or in privity with a party to the prior adjudication, and 4) the party against whom it is asserted has had a full and fair opportunity to litigate the issue in question in a prior action.

Safeguard Mutual Insurance Co., v. Williams, 463 Pa. 567, 345 A.2d 664, 668 (1975). As the Tuckers had their claims dismissed in *Tucker III,* collateral estoppel could properly be asserted against them if all four of the foregoing requirements were met. It is clear that the Tuckers chose the forum and that they had a full and fair opportunity to litigate the issues in question. It also cannot be disputed that the judgment in *Tucker III* was a final judgment on the merits and that the Tuckers were a party to the action. However, at this juncture, it is not clear that the issues are identical because, at the preliminary objection stage, we cannot determine whether the statements in the articles were the same and we can-

not determine whether the circumstances surrounding the publication of the articles were the same. That is, we do not know what notice the Tuckers provided to Appellant-newspapers and we do not know whether the conduct and knowledge of the reporters in the various cases were the same. Accordingly, at this juncture, the doctrine of issue preclusion does not bar the Tuckers' claims.

Concurrent with the filing of the current action (which we refer to as *Tucker IV*) against Appellant-newspapers, the Tuckers commenced another suit in the United States District Court for the Eastern District of Pennsylvania against more than one hundred media entities alleging that they, too, defamed the Tuckers in articles that characterized the *Tucker II* loss of consortium claim as including a loss of sexual relations between the Tuckers. *Tucker v. Los Angeles Times*, Civ. No. 98-3948 (E.D.Pa.1998) (hereinafter, *Tucker V*). That action is apparently stayed pending our disposition of this case.

***609** Because the issues in this case require us to determine whether the Tuckers have established a defamation cause of action against Appellant-newspapers, it is essential that we review the content of the articles they published. We now address them.

The Allegedly Defamatory Articles

On August 2, 1997, a picture of Mrs. Tucker and Mr. Shakur appeared on the front page of the *Philadelphia Daily News* with a headline, which read, "*A DIRTY RAP Suit v. Shakur* estate says 'vile' lyrics ruined her rep—and her sex life." The headline for the *Philadelphia Daily News* article was "Suit: Tupac dead wrong" with a sub-headline, which read, "Rights leader says rapper's strong words ruined her life." [FN12] Two ***610** days later, on August 4, 1997, The

Legal Intelligencer also reported on ****121** the Tuckers' federal lawsuit against the record companies. The headline read "Gangsta Rap Critic Sues Shakur Estate For Album's Derogatory References." [FN13] The ***611** Tuckers allege that these articles are defamatory because they reported that the ****122** Tuckers sought damages because the lyrics diminished their sex life. (R.R. 50a.)

> FN12. The text of the article read:
>
> C.De[L]ores Tucker has filed a $10 million lawsuit against Tupac Shakur's estate, saying some of the late rapper's lyrics caused her mental anguish and diminished her sex life.
>
> Tucker filed the lawsuit this week in Philadelphia federal court charging that Shakur's record-breaking 1996 CD "All Eyez on Me" caused her "great humiliation, mental pain and suffering."
>
> "She was really called a lot of bad names," said Tucker's Harrisburg attorney, Richard C. Angino: "It was all done to intimidate her."
>
> It also says the injuries caused her husband, William, to "suffer a loss of advice, companionship and consortium." Richard Fischbein, a New York attorney who is co-administrator of Shakur's estate, said he is baffled by the suit.
>
> "It is hard for me to conceive how these lyrics could destroy her sex life," Fischbein said. "But we can only wait for the proof to be revealed in court."
>
> Tucker and her husband took particular offense at the "lewd" and "indecent" references in two songs titled, "Wonda Why They Call U B—" and "How Do U Want It," the suit says.
>
> In one song, which the suit claims alludes to prostitution, the lyrics state: "Got your legs up trying to get

rich. Keep you head up and your legs closed, dear Ms. C. De[L]ores Tucker."

"Tupac was just one of the instruments that participated in slandering Dr. Tucker," Angino said.

He said such companies as Death Row Records, Interscope Records, Time Warner, Seagram and Tower Records—all named as defendants in the suit—are also responsible."

"These companies make billions of dollars putting out music that destroy[s] African-Americans," Angino said.

In filing the lawsuit, Tucker said that over the years she has tried to stop the production and distribution of gangsta rap to "impressionable youth, because it tends to corrupt the morals of minors."

She contends it "contains vile, profane, obscene and indecent lyrics which glorify drugs, violence and illicit sex."

Tucker, head of the Washington-based National Political Congress of Black Women, formed an anti-rap campaign that gained wide-spread support from such notables as former U.S. Education Secretary William Bennett; U.S. Sen. Joseph Lieberman, D. Conn.; former Republican presidential nominee Bob Dole and retired Gen. Colin Powell.

In January 1996, she began an organized protest of Tower Records in Philadelphia because the store was selling Shakur's "All Eyez on Me" to minors.

Kathleine Diange, administrative assistant for the South Street Tower Records store, remembers when Tucker and her entourage protested outside the record store forcing it to close briefly.

"They were reading the obscene lyrics off of the CD through a bullhorn outside of the store," Diange

recalled. "Then, they came into the store and started to throw the CDs on the ground."

The police were called and Tucker was arrested.

"I think she blew the situation out of proportion." Diange said.

Tucker, a former secretary of state for Pennsylvania, has been harshly condemned by some black intellectuals for aligning herself with right-wing political leaders to fight gangsta rap.

Tucker's lawyer defended her tactics, saying "Here is a woman who has spent her lifetime caring about her people, and now these record companies are trying to make her life miserable."

"This is the woman who marched with Martin Luther King to fight for integration, and now she is fighting a new battle against gangsta rap."

Since the record's release, her lawyer said Tucker has received death threats and now fears for her life. She also has incurred medical expenses, suffered a loss of life's pleasures and has lost the freedom to travel freely.

"Tucker has reasonable fear for her life because violence and death play a central role in the gangsta rap arena," the lawsuit states.

Calls were placed to Interscope Records, Death Row Records, and Time Warner, but no one was available for comment. (R.R. 44a-45a.)

FN13. The text of the article was as follows:

A woman who built a national reputation for criticizing the violent lyrics of gangsta rap has sued the estate of Tupac Shakur, saying one of his albums made derogatory references to her.

C. De[L]ores Tucker filed the suit last week in Philadelphia federal court, claiming, among other things, that the anguish caused by the lyrics diminished her sex life with her husband.

Shakur's "All Eyez on Me"—a 1996 double CD that sold nearly five million copies—caused Mrs. Tucker "great humiliation, mental pain and suffering," according to the lawsuit. It also says the injuries caused her husband, William, to "suffer a loss of advice, companionship and consortium."

Mrs. Tucker, who is asking for $10 million in the suit, could not be reached for comment Thursday.

Richard Fischbein, a New York attorney who is co-administrator of the estate said he is baffled by the suit.

"It's hard for me to conceive how these lyrics could destroy her sex life," Fischbein said. "But we can only wait for the proof to be revealed in court."

Tucker and her husband, William, took particular offense at the "lewd" and "indecent" references in two songs titled, Wonda Why They Call U B___" and "How Do U Want It," the suit says.

In one song, which the suit claims alludes to prostitution, the lyrics state: "Got your legs up trying to get rich. Keep your head up and your legs closed, dear Ms. C. De[L]ores Tucker."

The suit also names Shakur's wife, Afeni, Death Row Records, Interscope Records, Time Warner, Seagram Co., Tower Records and seven other people and entities as defendants.

Tucker, head of the Washington-based National Political Congress of Black Women, formed an anti-rap campaign in 1994 with former U.S. drug czar William Bennett. Shakur was shot as he rode in a car near the

Las Vegas Strip Sept. 7. He died six days later at a local hospital.
(R.R.50a-51a.)

The Tuckers' Defamation Claim

Mrs. Tucker claims that Appellant-newspapers ignored her press release and focused instead on the "sensationalize[d] ... sexual 'spin'" provided by the attorney for the Estate of Shakur. She alleges that the newspapers "distorted and misrepresented [her] Complaint as being one where she brought a $10 million lawsuit only because lewd lyrics destroyed her sex life ... [and that they] misrepresented and/or falsely represented that the July 21, 1997, *[Tucker II]* Complaint is a lawsuit wherein [the Tuckers] aver that Tupac Shakur's lewd lyrics had affected or destroyed the Tuckers' sex life." (R.R. 32a-33a.) Central to her claim is a contention that, "the defendants have slandered and defamed [her and her husband] by making [them] objects of ridicule in the ***612** world, and ... with knowledge [of the falsity] or reckless disregard of the truth ... of the articles." (R.R. 38a-39a.) Accordingly, in this case, Mrs. Tucker and her husband demanded compensatory damages in the amount of $1 million for current and future medical expenses, mental pain and suffering, inconvenience, loss of life's pleasures, humiliation, and embarrassment. They also sought punitive damages in amounts sufficient to prevent the Appellant-newspapers from publishing future articles similar to the ones at issue in the instant case. (R.R. 39a.)

Dismissal of the Tuckers' Claims by the Philadelphia Court of Common Pleas and Their Reinstatement by the Superior Court

On March 19, 1999, in the Philadelphia Court of Common Pleas (trial court), Appellant-newspapers filed Prelimi-

nary Objections to the Complaint of the Tuckers. Appellant-newspapers argued to the trial court that the Complaint should be dismissed because: "(1) the [newspapers'] Article[s] and the statements contained therein, are not capable of a defamatory meaning as a matter of law; (2) [the Tuckers] have failed to satisfy the pleading standard of actual malice to support their claim for defamation or their prayer for punitive damages; and (3) the Article[s], even if defamatory, [are] protected by the media's long-standing privilege to publish fair and accurate accounts of judicial proceedings." (R.R. 117a-118a.) The trial court sustained the Preliminary Objections and dismissed the Complaint. First, the court agreed with the argument of the Appellant-newspapers that the articles are not capable of a defamatory meaning. The court explained:

> Based on the information set forth in the complaint and relevant case law, Tucker has failed to state a cause of action for defamation. She has not presented evidence that her reputation was actually damaged, only that she feels ridiculed when people ask her about the *Shakur* case. She does not contend that people have stopped asking her to speak at public engagements or provide other indicators that her position in the community has diminished. The only harm that Tucker alleges is that people question her ***613** about the lawsuit. Her embarrassment from the questions does not rise to the level of harming her reputation or deterring third parties from associating with her. Because Tucker's complaint failed to show any defamation resulted from the publication of their articles, the Defendants' Preliminary Objections are properly sustained.

Tucker v. Legal Communications, Ltd, No. 3644, slip op. at 6 (C.P. Phila. Co. filed June 16, 1999) (footnote omitted). The trial court also accepted the argument of Appellant-newspa-

pers that the Tuckers **123 had failed to prove actual malice because they "provided no evidence that the authors had knowledge that their statements were false or acted with reckless disregard for the truth." *Id.* at 7. Indeed, the court found that the statements were not false because the definition of consortium includes sexual relations. *Id.* at 7-8. The trial court also agreed with the argument of Appellant-newspapers that, because the articles, taken as a whole, were fair and accurate and were not published for the sole purpose of causing harm to the Tuckers, the report was protected by the fair reporting privilege. *Id.* at 8-9.

The Superior Court reversed and remanded for further proceedings. It determined that: (1) the articles were capable of a defamatory meaning; (2) the Tuckers were not required to prove actual malice at the pleading stage; and (3) the issue of whether the fair reporting privilege was abused was an issue for a jury to decide. [FN14] *Tucker v. Philadelphia Newspapers,* 757 A.2d 938 (Pa.Super.2000). The Superior Court believed that the implication of the articles—that the Tuckers, who hold themselves out as moral people, are "overly concerned with sexual matters [—] could be capable of a defamatory meaning." *Id.* at 944. Also, the Superior Court agreed with the Tuckers' argument that Appellant-newspapers' "emphasis ... on the one possible component of a loss of consortium claim, to the exclusion of the other ingredients, creates an impression that will expose the Tuckers to public *614 hatred and ridicule." *Id.* at 943. The court also accepted the contention of the Tuckers that "because of their advanced age and their reputation as people of strong morals, the suggestion in the newspaper articles that the Tuckers are overly concerned with sexual matters could be capable of defamatory meaning." *Id.* at 943-44. The Superior Court ultimately held that determining whether the articles

were published with knowledge of their falsity or reckless disregard for the truth requires an analysis of the state of mind of the authors and publishers, which the Superior Court agreed should not occur at the pleading stage. Accordingly, the Superior Court reversed the trial court and remanded the case for further proceedings.

> FN14. Appellant-newspapers did not request leave to appeal the issue of whether the fair reporting privilege insulates them from liability and we do not address it.

Appellant-newspapers filed a petition for allowance of leave to appeal, which we granted. Appellant-newspapers formulated the issues as follows:

> 1. Is the statement that [the Tuckers] filed a lawsuit[,] which asserts, *inter alia*, a claim for loss of consortium, including damage to their sex life, capable of a defamatory meaning?
>
> 2. Can [the Tuckers] recover for defamation for publication of true information about a lawsuit, when the United States Supreme Court and this Court have repeatedly held that, under the First and Fourteenth Amendments, in order for a statement to be actionable in defamation, it must be false?

We address those issues *seriatim*.

Discussion

Issue I: Defamatory Meaning

[2][3][4] Our initial inquiry concerns whether the statement that the Tuckers' claimed $10,000,000.00 in compensation for damage to their sexual relationship was capable of a defamatory meaning. "In an action for defamation, the plaintiff has the burden of proving ... [t]he defamatory character of the communication." 42 Pa.C.S. § 8343(a). "It is the function of the court to determine whether the challenged pub-

lication is *615 capable of a defamatory **124 meaning. If the court determines that the challenged publication is not capable of a defamatory meaning, there is no basis for the matter to proceed to trial." *Thomas Merton Center v. Rockwell International Corp.*, 497 Pa. 460, 442 A.2d 213, 215-16 (1981).

[5][6][7][8][9] To determine whether a statement is capable of a defamatory meaning, we consider whether the statement "tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third parties from associating or dealing with him." *Birl v. Philadelphia Elec. Co.*, 402 Pa. 297, 167 A.2d 472, 475 (1960) (quoting Restatement (First) of Torts, § 559 (1989)). "Libel is the malicious publication of printed or written matter which tends to blacken a person's reputation and expose him to public hatred, contempt or ridicule." *Schnabel v. Meredith*, 378 Pa. 609, 107 A.2d 860, 862 (1954); *see also Corabi v. Curtis Publishing Co.*, 441 Pa. 432, 273 A.2d 899, 904 (1971) (same). "The court must view the statements in context" *Baker v. Lafayette College*, 516 Pa. 291, 532 A.2d 399, 402 (1987).

> [W]ords which standing alone may reasonably be understood as defamatory may be so explained or qualified by their context as to make such an interpretation unreasonable. Thus, we must consider the full context of the article to determine the effect the article is fairly calculated to produce, the impression it would naturally engender, in the minds of the average persons among whom it is intended to circulate.

Thomas Merton, 442 A.2d at 216 (internal citations and quotations omitted). "It is not enough that the victim of the [statements] ... be embarrassed or annoyed, he must have suffered the kind of harm which has grievously fractured his standing in the community of respectable society." *Scott-Taylor, Inc. v. Stokes*, 425 Pa. 426, 229 A.2d 733, 734 (1967).

We have demonstrated a willingness to dismiss defamation claims where we have determined that the offending statements were not capable of a defamatory meaning. *Baker,* 532 A.2d at 402, 403 (affirming grant of summary judgment because *616 the statements in letters to the college provost that: (1) the department chairman "consider[ed the professor's presence in] classes to be an extraordinary, peculiar, and academically deplorable arrangement[;]" and (2) that the chairman had reported that the professor was "cavalier in his dealings with students [demonstrating] ... a general attitude that the best way to build a program is by giving high grades[;]" were not capable of defamatory meanings); *Thomas Merton,* 442 A.2d at 214-15 (dismissing complaint, as not capable of defamatory meaning, that alleged that an Associated Press article conveyed the impression that the members of the Thomas Merton Center were Communists by stating that the Soviets were funding opposition to the B-1 bomber project and identifying the Center as a group opposed to the project that may have unknowingly received Soviet financing); *Clark v. Allen,* 415 Pa. 484, 204 A.2d 42 (1964) (sustaining grant of preliminary objections dismissing defamation claim arising out of a letter expressing shock that U.S. Senator's voting record indicated that he had "Communist tendencies"); *Scott-Taylor,* 229 A.2d at 733 (statement of Chairman of Board of Supervisors indicating concern that proposed new building project would end up like a project owned by plaintiff that the Chairman stated looked like a chicken coop—dismissed on preliminary objections despite averment that Chairman made the statements maliciously, knowing they were false and with intent to harm the owner).

**125 However, as the Third Circuit recently pointed out, we have found other statements capable of conveying defamatory meaning. *Tucker III,* 237 F.3d at 282-83 (3d

Cir.2001). In *Tucker III*, the Third Circuit considered statements that appeared in *Newsweek* and *Time* virtually identical to ones Appellant-newspapers made in the instant case, and predicted, based on the law of Pennsylvania, that we would view the statements as capable of a defamatory meaning. The court based its position on two cases, *Cosgrove Studio & Camera Shop, Inc. v. Pane*, 408 Pa. 314, 182 A.2d 751 (1962), and *Birl*, which Appellant-newspapers contend are distinguishable.

***617** *Cosgrove* involved a dispute between competing camera shops. The plaintiff shop advertised that it would provide a free roll of film for every roll it developed. The defendant shop responded with its own advertisement advising the public that "you get nothing for nothing" and that the defendant shop would not:

> 1. inflate the prices of developing your film to give you a new roll free! 2. Print the blurred negatives to inflate the price of your snapshots! 3. Hurry up the developing of your valuable snapshots and ruin them! 4. Use inferior chemicals and paper on your valuable snapshots.

Cosgrove, 182 A.2d at 752. We held that the statement was capable of a defamatory meaning because the advertisement "clearly imputes, to the person to whom it refers, characteristics and conduct which are incompatible with the proper and lawful exercise of a business." *Id.* at 753. Because we had previously held that "any language which unequivocally, maliciously and falsely imputes to an individual or corporation want of integrity in the conduct of his or its business is actionable[,]" we allowed the case to proceed. *Id.* at 754.

Similarly, in *Birl*, we held that statements made by the Philadelphia Electric Company (PECO), Birl's former employer, to his current employer, were capable of a defamatory meaning. There, a PECO sales manager contacted the

current employer of Birl and told him that PECO would not do business with Birl because Birl had left his employment with PECO without notice. Apparently, business with PECO was important to Birl's current employer, which told him that it would discharge him if PECO did not reverse its position. PECO refused and Birl was discharged. He sued for defamation and tortious interference with contractual relations and the trial court dismissed both counts on preliminary objections. The Superior Court affirmed. We reversed, holding that both claims should have been allowed to proceed further. As to the defamation claim, we held that the statements of PECO were capable of a defamatory meaning because people who heard the statement, "could reasonably conclude that Birl lacked honor and integrity and was not a person to be relied ***618** upon insofar as his business dealings were concerned." *Birl,* 167 A.2d at 476. Although we agree with the argument of Appellant-newspapers that *Birl* and *Cosgrove* are distinguishable because they considered situations in which it was indisputable that an issue existed as to whether the statements imputed a "want of integrity in ... business," *Cosgrove,* 182 A.2d at 754, that does not end our analysis.

The question for us is whether the statements of Appellant-newspapers tended to harm the reputation of the Tuckers so as to tarnish their "reputation and expose [them] to public hatred, contempt or ridicule." *Schnabel,* 107 A.2d at 862.

In *Tucker III,* the Third Circuit applied Pennsylvania law to the *Newsweek* and *Time* articles and concluded that the statement ****126** that the Tuckers had sued for $10 million because the lyrics damaged their sex lives was capable of a defamatory meaning. The court stated:

> Reading the statements at issue in this case in context and looking at the impression that they were likely

> to engender in the minds of the average reader, we conclude that each is capable of a defamatory meaning. Mrs. Tucker has led a campaign against the immorality of gangsta rap and those who profit from it. The statements made by the defendants—to the effect that Mrs. Tucker and her husband brought a $10 million lawsuit because Shakur's lyrics damaged their sex life—carry numerous disparaging implications. Because of the inherent implausibility of the idea that lyrics alone could cause millions of dollars of damage to a couple's sexual relationship, the statements were capable of making the Tuckers look insincere, excessively litigious, avaricious, and perhaps unstable. Furthermore, the statements tended to suggest that the Tuckers are hypocritical, that after condemning the gangsta rap industry for profiting from pornography, the Tuckers were only too willing to open up their own sex life for public inspection in order to reap a pecuniary gain. In the more colloquial language used by the defendants themselves, the statements suggested that the Tuckers were "[g]rabbing [a]t a [d]ead [s]tar['s]" "[b]ooty" and were willing to take the witness stand at trial ***619** and publicly provide the testimony about their sex lives that Fischbein "[couldn't] wait to hear." Such statements were capable of lowering the Tuckers' reputation in the eyes of the community and of causing others to avoid associating with them.

Tucker III, 237 F.3d at 282-83 (3d Cir.2001).-It is known that married people have sexual relations, and it is not generally defamatory to report that they do so. However, it may be defamatory to state falsely that a husband has sued to recover ten million dollars for loss of sexual relations as a result of the lyrics of two songs. Such a statement could make the Tuckers seem overly interested in money or sex, and not con-

cerned with their life work of fighting for civil rights. It is possible to conclude that such a false statement would cause people to decline to associate with the Tuckers.

We also recognize that this is still the pleading stage. There has been no discovery. Therefore, we cannot know the full effects of the statement. We can only be guided by the pleadings, which allege that the articles "made the Tuckers objects of ridicule in the world ... [and that the Tuckers] cannot go anywhere or do anything without friends, relatives, acquaintances, and even strangers questioning the[m] ... as to why they brought such a ridiculous law suit." (R.R. at 38a-40a.) The Complaint does not specifically state that the Tuckers "suffered the kind of harm which has grievously fractured [their] standing in the community of respectable society." *Scott-Taylor*, 229 A.2d at 734. It does not state that the statements harmed their "reputation and expose[d them] to public hatred, [or] contempt...." *Schnabel*, 107 A.2d at 862. However, it does put Appellant-newspapers on notice that the Tuckers have brought a defamation claim against them and have suffered damages measured by the allegation that the articles have held them out for ridicule in the world. Therefore, the Complaint, albeit barely, alleges that the statements are capable of a defamatory meaning and, at this point in the proceedings, we so find.

***620 Issue II: Constitutional Limits on State Defamation Law**

[10] Having determined that the statements may be capable of a defamatory ****127** meaning, and are not subject to dismissal on preliminary objections, we turn to the second question at issue in this case. That is, whether the First Amendment, as applied to the states by the Fourteenth Amendment, precludes the Tuckers from recovering in their defamation action. It cannot be disputed that the Complaint

in *Tucker II* included a claim for loss of consortium and that, by definition, a loss of consortium claim includes a claim for loss of sexual relations. Consortium is defined as "the legal right of one spouse to the company, affection, and assistance of and to sexual relations with the other." *Machado v. Kunkel,* 804 A.2d 1238, 1244 (Pa.Super.2002) (quoting Webster's Collegiate Dictionary, 10th Edition (1998)). More generally, consortium means:

> "Conjugal fellowship of husband and wife, and the right of each to the company, society, co-operation, affection, and aid of the other in every conjugal relation." BLACK'S LAW DICTIONARY 309 (6th ed.1990). A claim for loss of consortium arises from the marital relationship and is based on the loss of a spouse's services resulting from an injury.

Cleveland v. Johns-Manville Corp., 547 Pa. 402, 690 A.2d 1146, 1149 (1997). Accordingly, there can be no dispute that the definition of consortium includes a claim for damage to the sexual relationship of a married couple. Indeed, the Tuckers admit as much. [FN15]

> FN15. The Tuckers quote BLACK'S LAW DICTIONARY 958 (7th Ed.1999) as defining loss of consortium as "[a] loss of the benefits that one spouse is entitled to receive from the other, including companionship, cooperation, aid, affection, and sexual relations...." Brief of Appellees at 20. Although the Tuckers admit that a loss of consortium claim may include a claim for loss of sexual relations, they assert that it almost never does include such a claim and that in this case it did not.

Because Appellant-newspapers reasonably relied upon the plain meaning of consortium and the conclusion of the attorney for the Estate of Shakur that the Tuckers were suing for loss of sexual companionship, Appellant-newspapers

ask how can they be held liable for making a true statement. Clearly, if the newspapers printed a true statement, they could not be *621 held liable in a defamation action. *New York Times,* 376 U.S. at 279-280, 84 S.Ct. 710.

The issue, as formulated by Appellant-newspapers, assumes that there is no dispute that the statement, "the Tuckers are suing the record companies because the lyrics of Shakur songs damaged their sex life," is true. However, the Tuckers claim that Appellant-newspapers published the articles with knowledge that the statements were false and/or with reckless disregard for the truth. (R.R. 38a.) Specifically, the Tuckers allege that some of the newspapers actually knew, before they printed the articles, that the Tuckers were not suing for loss of sexual relations because, they claim, their attorney communicated that information to the newspapers. (R.R. 36a.) The Tuckers also claim that Appellant-newspapers acted with reckless disregard of the truth because some of them allegedly: (a) failed to contact the Tuckers' lawyers; (b) relied upon the biased statement of the attorney for the Estate of Shaker; (c) failed to research the background of the Tuckers; (d) failed to obtain the *Tucker II* Complaint; (e) failed to read it; (f) ignored the Tuckers' press release regarding *Tucker II;* (g) and/or failed to properly investigate the facts of the article. (R.R. 34a-38a.)

Actual Malice

[11] To prevail on their defamation claim, the Tuckers, as public figures, must prove, by clear and convincing evidence that the allegedly defamatory statements **128 were false and that Appellant-newspapers either knew they were false or recklessly disregarded their falsity. [FN16] *Milkovich,* 497 U.S. at 15, 110 S.Ct. 2695. United States Supreme Court cases discussing the First Amendment outline the federal

constitutional limits of state defamation law. We now review that law.

FN16. The Tuckers apparently admit that they are public figures and that they must prove that Appellant-newspapers published the articles with actual malice. (R.R. 119a.)

In the early 1960s, the struggle of African Americans for equality and against racism was at a defining moment. African-Americans organized and sought to publicize their work. On March 29, 1960, the *New York Times* published a public ***622** information statement, created by the Committee to Defend Martin Luther King and the Struggle for Freedom in the South, that included several statements that turned out to be incorrect concerning police handling of Alabama race relations. Because at the time Alabama law [FN17] was such that a statement imputing misconduct to a public official was presumed to be false unless the defendants could prove that the statement was true, all the jury had to conclude to award expression-inhibiting damages in *New York Times v. Sullivan* was that the defamatory statement was of and concerning the plaintiff. The state court jury so concluded and awarded a county commissioner the sum of $500,000.00. *New York Times*, 376 U.S. at 256, 84 S.Ct. 710.

FN17. Pennsylvania common law was similar. A person's good character was presumed; therefore, our courts presumed that a defamatory statement was false. Additionally, to escape liability, defendants had the burden of proving that the presumptively defamatory statement was true. *Hepps v. Philadelphia Newspapers, Inc.*, 506 Pa. 304, 485 A.2d 374, 378 (1984) *rev'd* 475 U.S. 767, 106 S.Ct. 1558, 89 L.Ed.2d 783 (1986).

The U.S. Supreme Court reviewed the award in *New York Times v. Sullivan* and announced that it violated consti-

tutional protections of free speech and press. The Court explained the reasons why a federal court was justified in limiting state defamation law. The Court began with a discussion of an unconstitutional federal statute, [FN18] the Sedition Act, which limited speech by prohibiting false statements about the United States, the Congress, or the President. [FN19]

FN18. Despite the fact that no one directly challenged the Sedition Act before the U.S. Supreme Court, it has been roundly criticized and is accepted as being unconstitutional. *New York Times*, 376 U.S. at 276, 84 S.Ct. 710. President Jefferson "pardoned those who had been convicted and sentenced under the Act and remitted their fines, stating: 'I discharge every person under punishment or prosecution under the sedition law, because I considered, and now consider, that law to be a nullity, as absolute and as palpable as if Congress had ordered us to fall down and worship a golden image.'" *Id.* (quoting Letter to Mrs. Adams, July 22, 1804, 4 Jefferson's Works (Washington ed.), pp. 555, 556). His view "reflect[ed] a broad consensus that the Act, because of the restraint it imposed upon criticism of government and public officials, was inconsistent with the First Amendment." *Id.*

FN19. The Sedition Act of 1798 provided for the imposition of a penalty "if any person shall write, print, utter or publish ... any false, scandalous and malicious writing or writings against the government of the United States, or either house of the Congress ... or the President ..., with intent to defame ... or to bring them, or either of them, into contempt or disrepute; or to excite against them, or either or any of them, the hatred of the good people of the United States." *New York Times*, 376

U.S. at 273-274, 84 S.Ct. 710 (quoting the Sedition Act of 1798, 1 Stat. 596).

***623** The Sedition Act was a federal criminal statute that unconstitutionally limited free speech. However, the issue in *New York* ****129** *Times* was whether state libel law had an unconstitutionally chilling effect on free expression. The Court explained that the repressive effect of a criminal statute, like the Sedition Act, and an overly broad state defamation law was quite similar, [FN20] noting that "what a State may not constitutionally bring about by means of a criminal statu[t]e is likewise beyond the reach of its civil law of libel." *New York Times*, 376 U.S. at 277, 84 S.Ct. 710. Therefore, the Court observed that states may not use their defamation laws to limit speech to the extent it would impermissibly restrict the exercise of First Amendment rights.

FN20. Indeed, the Court pointed out that the law of defamation could pose even greater burdens upon free expression for several reasons. Civil penalties can be very large indeed and can subject the same newspaper to liability for every article it writes that is deemed defamatory. Additionally, with regard to state defamation law, there is no provision for double jeopardy and proof is by a preponderance of the evidence not beyond a reasonable doubt. It is, therefore, clear that civil limitations on speech can be just as chilling on the free exchange of ideas as criminal laws.

The Court then rejected the argument that a defendant's defense of truth should quell all fears that civil laws will hamper the free exchange of ideas. Indeed, the Court believed that requiring a defendant to prove the truth of the matter with regard to comments about public officials in their public capacities was not sufficient to protect First Amendment concerns and would result in self-censorship. It explained:

[A] rule compelling the critic of official conduct to guarantee the truth of all his factual assertions—and to

> do so on pain of libel judgments virtually unlimited in amount—leads to ... self-censorship. Allowance of the defense of truth, ***624** with the burden of proving it on the defendant, does not mean that only false speech will be deterred.... Under such a rule, would-be critics of official conduct may be deterred from voicing their criticism, even though it is believed to be true and even though it is in fact true, because of doubt whether it can be proved in court or fear of the expense of having to do so. They tend to make only statements which steer far wider of the unlawful zone. The rule thus dampens the vigor and limits the variety of public debate. It is inconsistent with the First and Fourteenth Amendments.

Id. at 279, 84 S.Ct. 710 (internal citations and quotations omitted). To protect the freedoms of speech and press, the Court determined that safeguards in addition to offering a defendant the defense of proving truth were necessary. The Court then articulated the actual malice standard as follows:

> The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not.

Id., at 279-80, 84 S.Ct. 710. Thereafter, a newspaper no longer had to prove that the offending statement was true to defend against a defamation action so as to give the First Amendment protections "breathing space" from censorship. *NAACP v. Button*, 371 U.S. 415, 433, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963). A public official who feels he or she was defamed with regard to a matter of public concern not only has the burden of proving that the statement was false but that the

newspaper either knew the statement was false or printed it with reckless disregard of its falsity. *Id.*

****130** The U.S. Supreme Court has since extended the actual malice standard from public officials to public figures, like the Tuckers. *See Curtis Publishing Co. v. Butts,* 388 U.S. 130, 162, 87 S.Ct. 1975, 18 L.Ed.2d 1094 (1967) (and ***625** *Associated Press v. Walker,* 389 U.S. 889, 88 S.Ct. 13, 19 L.Ed.2d 198 (1967), which the court resolved in the same opinion). [FN21]

FN21. In *Curtis,* the Court applied the actual malice standard to the football coach for the University of Georgia and in *Walker* to a former General's role in a University of Mississippi riot.

The U.S. Supreme Court has also rejected "the common-law presumption that defamatory speech is false" and has, in its place, set forth "a constitutional requirement that the plaintiff bear the burden of showing falsity, as well as fault, before recovering damages." *Hepps,* 475 U.S. at 777, 106 S.Ct. 1558 (holding unconstitutional our Court's determination that the defendant had the burden of proving the truth of its statement). The U.S. Supreme Court has, therefore, held that it would have an unconstitutionally chilling effect on speech for a state to require a defendant to prove the truth of a matter of public concern even if a public figure is not involved. [FN22]

FN22. The U.S. Supreme Court has declined to expand the application of the actual malice standard from public officials to private individuals who speak about a matter of public concern. *Gertz v. Welch,* 418 U.S. 323, 342, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974).

Application of Actual Malice Standard to the Claim of the Tuckers

[12] The Tuckers allege that, at the pleading stage, it is unreasonable for them to have to prove actual malice because they contend that it involves an assessment of the state of mind of the defendant, a fact, which requires discovery to establish. It is true that there are instances in which the U.S. Supreme Court and this Court have declined to dismiss a pleading prior to trial because a factual dispute with regard to a component of actual malice made it premature to do so. *See Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 521, 111 S.Ct. 2419, 115 L.Ed.2d 447 (1991) (reversing grant of summary judgment; "at this stage, the evidence creates a jury question whether [the writer of the article] published the statements with knowledge or reckless disregard" of the falsity of the statements); *Curran v. Philadelphia Newspapers, Inc.*, 497 Pa. 163, 439 A.2d 652 (1981) (summary judgment ***626** motion disputing claim of actual malice granted in part and denied in part).

[13] However, the requirement that the plaintiff be able to show actual malice by clear and convincing evidence is initially a matter of law. *Milkovich*, 497 U.S. at 17, 110 S.Ct. 2695. " 'The question whether the evidence in the record in a defamation case is sufficient to support a finding of actual malice is a question of law.' " *Id.* (quoting *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 685-86, 109 S.Ct. 2678, 105 L.Ed.2d 562 (1989)). *See also Ertel v. Patriot-News Company*, 544 Pa. 93, 674 A.2d 1038 (1996) (holding trial court's grant of summary judgment proper because the plaintiff could not show actual malice by clear and convincing evidence). Indeed, in *Harte-Hanks*, the U.S. Supreme Court explained that:

> This rule is not simply premised on common-law tradition, but on the unique character of the interest

> protected by the actual malice standard. Our profound national commitment to the free exchange of ideas, as enshrined in the First Amendment, demands that the law of libel carve out an area of breathing space so that protected speech is not ****131** discouraged. The meaning of terms such as actual malice—and, more particularly, reckless disregard—however, is not readily captured in one infallible definition. Rather, only through the course of case-by-case adjudication can we give content to these otherwise elusive constitutional standards. Moreover, such elucidation is particularly important in the area of free speech for precisely the same reason that the actual malice standard is itself necessary. Uncertainty as to the scope of the constitutional protection can only dissuade protected speech—the more elusive the standard, the less protection it affords. Most fundamentally, the rule is premised on the recognition that *"[j]udges, as expositors of the Constitution," have a duty to "independently decide whether the evidence in the record is sufficient to cross the constitutional threshold that bars the entry of any judgment that is not supported by clear and convincing proof of 'actual malice.'"*

***627** *Harte-Hanks*, 491 U.S. at 685-686, 109 S.Ct. 2678 (emphasis added, internal citations and some quotations omitted) (quoting *Bose Corp. v. Consumers Union of U.S., Inc*, 466 U.S. 485, 511, 104 S.Ct. 1949, 80 L.Ed.2d 502 (1984)). Accordingly, we must consider whether a reasonable jury could conclude by clear and convincing evidence that Appellant-newspapers printed statements they knew were false or printed them with reckless disregard of their falsity.

[14][15] The standard to be applied upon review of a motion for judgment on the pleadings accepts all well-pleaded allegations of the complaint as true. "'The question presented by the demurrer is whether, on the facts averred, the law

says with certainty that no recovery is possible. Where a doubt exists as to whether a demurrer should be sustained, this doubt should be resolved in favor of overruling it.'" *MacElree v. Philadelphia Newspapers, Inc.*, 544 Pa. 117, 674 A.2d 1050, 1054 (1996) (quoting *Vattimo v. Lower Bucks Hospital, Inc.*, 502 Pa. 241, 465 A.2d 1231 (1983)). Accordingly, we consider the actual malice standard to determine whether, assuming the allegations of the Complaint are true, the Tuckers' action should be remanded for further proceedings or dismissed.

Essentially, the Tuckers claim that, notwithstanding that the Complaint in *Tucker II* alleged a loss of consortium claim, Appellant-newspapers knew that the Tuckers were not seeking damages for loss of their sexual relationship or printed the statement with reckless disregard of its falsity. Specifically, they contend that they can prove actual malice because the Tuckers' attorney purportedly told some of the newspapers that the Tuckers were not suing for loss of sexual relations and Appellant-newspapers recklessly disregarded this warning and published their interpretation anyway. (R.R. 36a.) The Tuckers also claim that Appellant-newspapers acted with reckless disregard of the truth because some of them allegedly: (a) failed to rely on the best sources; (b) relied upon the biased statement of the attorney for the Estate of Shakur; (c) failed to research the background of the Tuckers; (d) ignored the Tuckers' press release regarding *Tucker II;* and/or (e) failed ***628** to properly investigate the facts of the article. (R.R. 34a-38a.) The Tuckers, therefore, contend that they have set forth sufficient allegations of actual malice to avoid judgment on the pleadings.

Several of the Tuckers' allegations are based upon an incorrect understanding of the articles the Appellant-newspapers published. For example, the Tuckers contend that the Appellant-newspapers showed actual malice by describ-

ing the *Tucker II* **132 Complaint as one in which the Tuckers: (1) only sued the Shakur Estate, and (2) were seeking $10 million only because lewd lyrics destroyed their sex life. However, neither the *Philadelphia Daily News* nor the *Legal Intelligencer* made either of these statements. The *Philadelphia Daily News* article makes it clear it did not allege that the Tuckers only sued Mr. Shakur. Indeed, it quoted the Tuckers' attorney as stating that the Tuckers also sued the companies that produce, distribute, and sell the subject records. (R.R. 44a-45a.) Similarly, the *Legal Intelligencer* article made it clear that "[t]he suit also names Shakur's Wife, Afeni, Death Row Records, Interscope Records, Time Warner, Seagram Co., Tower Records and seven other people and entities as defendants." (R.R. 50a-51a.)

The Tuckers' next allegation that Appellant-newspapers stated that the Tuckers "were seeking $10 million only because lewd lyrics destroyed [their] sex life" is also not correct. Both Appellant-newspapers pointed out that the Tuckers were suing for other things, too. The *Philadelphia Daily News* article stated that Mrs. Tucker suffered mental anguish, great humiliation, and mental pain and suffering, and that she was suing, in part, "to stop the production and distribution of gangsta rap to 'impressionable youth, because it tends to corrupt the morals of minors.' " (R.R. 44a (quoting Mrs. Tucker).) The article reported that Mrs. Tucker alleged that she was slandered and that she "has reasonable fear for her life because violence and death play a central role in the gangsta rap arena." Although the *Legal Intelligencer* article did not give as many details about the other relief sought by the Tuckers, it stated that the lawsuit sought relief for other *629 things, including damages for "humiliation, mental pain and suffering" because of the lyrics of the songs on the "All Eyez on Me" album. (R.R. 50a.)

The Tuckers also contend that the purported failure of Appellant-newspapers to consider the Tuckers' press release was evidence of actual malice. (R.R. 34a.) Appellant-newspapers properly demurred to this statement. The Tuckers cannot prove actual malice based on their belief that Appellant-newspapers should have paid more attention to the Tuckers' press release especially where the release did not deny that the Tuckers sought damages for diminished sexual relations. Indeed, the press release stated that Mrs. Tucker's "husband, William, a well known businessman, joins her as a plaintiff in the suit." (R. 72a.) The press release did nothing to dispel the belief of Appellant-newspapers that the loss of consortium claim included a claim for loss of sexual relations.

The Tuckers further allege that the newspapers demonstrated actual malice by mischaracterizing the Complaint by emphasizing the sexual "spin" of Richard Fischbein. (R.R. 34a, 36a.) We do not find any basis from which a jury could conclude that Appellant-newspapers acted recklessly or in knowing disregard of the truth in reliance on the statement of Mr. Fischbein. In fact, the newspapers acted reasonably in quoting Mr. Fischbein. As an attorney and the executor of the Estate of Shakur, he is an entirely appropriate person for the newspapers to have interviewed. He was not an unreliable source and reliance upon him is not evidence of actual malice. *Curran,* 439 A.2d at 660. Additionally, the emphasis on the "spin" of Mr. Fischbein to attract some of the more prurient interests of the public is not defamatory. "An action for defamation cannot be premised solely on defendant's style or utilization of vivid words in reporting a judicial proceeding .... [an article does not become actionable] by reason of the alleged 'flippant' and 'smart alecky' style of writing which was utilized ... to create ****133** reader interest." *Binder v. Triangle Publications, Inc.*, 442 Pa. 319, 275 A.2d 53, 58 (1971)

(internal quotations and citations omitted). Although an article is not made defamatory by being unfair, the *Philadelphia Daily* **°630** *News* acted in an even handed manner by extensively quoting the attorney for the Tuckers in response to the comments of Mr. Fischbein. *See* R.R. 44a-45a.

Similarly, despite the fact that the *Legal Intelligencer* did not quote the Tuckers' attorney, it, too, was entitled to rely on the statements of Mr. Fischbein and the definition of the word "consortium." The *Legal Intelligencer* did report that "Mrs. Tucker, who is asking for $10 million in the suit, could not be reached for comment Thursday[,]" implicitly advising the reader that there may be another perspective to this story. Apparently, the *Legal Intelligencer* did not have the benefit of an interview with Mrs. Tucker, so it relied upon the Complaint and the other sources available. The fact that the newspapers did not interview Mrs. Tucker does not mean that they knew that the statement of Mr. Fischbein was false, nor does it create the inference that Appellant-newspapers had "obvious reasons to doubt the veracity" of his statements, especially where the *Tucker II* Complaint appeared to validate them. *St. Amant*, 390 U.S. at 732, 88 S.Ct. 1323.

Next, the Tuckers allege that:

> Only a few of the Defendants contacted Plaintiffs' law firm, which attorneys drafted the complaint, and the few defendants who did contact Plaintiffs' law firm misrepresented the complaint even after talking with Plaintiffs' counsel and after being advised that consortium counts *can* include a claim for damage to one's sexual life, but no such claim was being made by the Tuckers.

(R.R. 36a) (emphasis in original). This is a problematic allegation for Appellant-newspapers because, to the extent that they were told that the Tuckers' loss of consortium claim did not include a claim for damage to the Tuckers' sexual rela-

tionship or recklessly disregarded that fact, it would be possible for a jury to conclude that Appellant-newspapers printed the article with actual malice. The plaintiff is the master of his claim. If the plaintiff unequivocally denies that he or she is making a claim, and that information is communicated to a newspaper, *631 the fact that the newspaper stated that the plaintiff was making such a claim could be evidence of actual malice. [FN23]

> FN23. However, in other situations, where the plaintiff's position is not determinative of an issue, the communication of a denial by a plaintiff is not usually evidence of actual malice. "As one court has stated, '(i)f potential plaintiffs in libel suits could cut off a(no) malice defense simply by calling a newspaper and giving a broad denial of the article, the first amendment policy in *New York Times* would be undermined.'" *Curran*, 439 A.2d at 660 (internal citations omitted).

In *Tucker III*, the Tuckers made a similar claim, that their attorney told *Time* and *Newsweek* that the loss of consortium claim in *Tucker II* did not include an allegation of loss of sexual relations. However, despite the allegation, the Tuckers' attorney admitted that he made no such statement. "When asked exactly what he said to put [the *Newsweek* reporter] on notice that the Tuckers' claim did not involve impairment of sexual relations, Mr. Angino replied: 'I said only in the rarest of cases would you have a count that actually involves sex. *I'm under oath, so I cannot say to you that I said specifically, this case does not involve sex.*'" *Tucker III*, 237 F.3d at 286 (3d Cir.2001) (emphasis in original). It is also worthy of note that the *Newsweek* article was printed on August 20, 1997, eighteen days after the *Philadelphia Daily News* article and sixteen **134 days after the *Legal Intelligencer* article. Accordingly, it appears that, if Mr. Angino could

not state under oath that he told the *Newsweek* reporter that the *Tucker II* Complaint did not involve a claim of loss of sexual relations, it is unclear whether he told Appellant-newspapers in this case. [FN24]

FN24. We also note that the concurring and dissenting opinion of Judge Nygaard in *Tucker III* observed that there is evidence that the Tuckers in fact intended for their Complaint to include a claim for loss of sexual relations. Summarizing the evidence in paragraph form, Judge Nygaard noted:

I. In his deposition, the Tuckers' attorney, Mr. Angino, stipulated that at the time the suit was commenced, the original complaint itself provided no indication that a claim for interference with sexual relations was *not* being pursued, and that someone reading the Tuckers' complaint might assume that it alleged damage to sexual relations....

II. Mr. Angino also admitted in his deposition that when the suit was initiated, *he* was *not* sure whether the Tuckers sought recovery for damage to their sexual relations. He stated that "the purpose of the consortium count was to cover everything ... every way in which Mr. Tucker was affected, every way." The record does not contain any facts to the contrary.

III. The Tuckers themselves have failed to state, either in their depositions or in affidavits, that they had ruled out any facet of their consortium claim at the time they originally filed it.

* * *

VI. After observing the media's reaction to the consortium claim, Mr. Tucker had the opportunity in at least three separate interviews to clarify that he and his wife were not seeking compensation for injury to their sexual relations. Instead, Mr. Tucker confirmed in all three in-

terviews that interference with sexual relations was indeed an element of their claims.

VII. On August 13, 1997, in an interview with *Philadelphia Weekly,* Mr. Angino had a similar opportunity to clearly state for the public record that the Tuckers were foregoing any claims stemming from interference with sexual relations. However, Mr. Angino failed to do so. Instead, he stated that loss of consortium "is a standard addition to lawsuits of this type and refers to *all aspects* of the marital relationship, not necessarily sex."

VIII. On August 21, 1997, the Tuckers issued yet another press release. It again failed to disavow any claim arising out of Mr. Tucker's impotency or injury to the Tuckers' sexual relationship. Instead, the release confirmed the existence of such a claim and expressed the Tuckers' frustration that too much of the media's attention was focused on that aspect of the case: " 'All the media gleefully jumped on the so-called sex part in the suit that called attention to loss of consortium, which was put in there by my husband Bill, not by me,' [Mrs. Tucker] added, obviously nettled."

IX. The Tuckers have admitted that neither they, nor Mr. Angino, nor anyone on their behalf, ever called Fischbein, at any time, to correct his misunderstanding of the Tuckers' loss of consortium claim. The Tuckers have failed to provide *any* evidence, other than the language in their Amended Complaint, to suggest that they did not intend to claim loss of sexual relations. Instead, it is obvious to me that the statements made by the Tuckers and their attorney were deliberately cagey and equivocal so that they could, if they wished, introduce evidence of impotence and sexual dysfunction at trial.

Tucker III, 237 F.3d at 289-290 (3d Cir.2001) (Nygaard, J. concurring and dissenting) (internal cita-

tions omitted)(emphasis in original). Indeed, there is evidence that the Tuckers did not know what their claim included because the Tuckers' attorney "never discussed the loss of consortium claim with the Tuckers." The *Tucker II* Complaint was "drafted by a law student" and the Tuckers' attorney "did not even sign it, nor is it clear from the record that he even read the final draft. His wife (who is not an attorney) signed it for him." *Id.* at 290, n.7.

***632** [16] Additionally, the Tuckers' Complaint in this case is ambiguous at best. It alleges that Mr. Angino told "a few" of the defendants in the case that the *Tucker II* Complaint did not include a loss of sexual relations claim. (R.R. 36a.) It is ***633** not clear that the allegation of knowledge relates to these Appellant-newspapers. The Preliminary ****135** Objections of the *Philadelphia Daily News* asserted that the Complaint of the Tuckers should be dismissed because it "fails to adequately inform the defendants of the charges against them." (R. 131a.) It argued that the Complaint was insufficiently specific to meet the pleading requirements of Pa.R.C.P. 1028(a)(3). We agree.

We cannot know from the pleading whether the remaining Appellant-newspapers were among the newspapers Mr. Angino asserted he spoke with, especially because several newspapers were dismissed from the action. More generally, there is no way a court can possibly evaluate a pleading to determine if it states a cause of action if it is so vague that the court cannot determine whether the plaintiffs allege to have given the defendants important notice. Here we do not know whether the attorney for the Tuckers claims to have actually told Appellant-newspapers that the loss of consortium claim did not include a loss of sexual relations allegation and we are unable to conclude that he did based upon the

current pleading. However, in the event that the Tuckers are able to show that they unequivocally communicated the foregoing information to Appellant-newspapers, the Tuckers would have stated a viable cause of action. *See Curtis Publishing*, 388 U.S. at 169-170, 87 S.Ct. 1975 (observing that where "little investigative effort was expended initially, and no additional inquiries were made even after the editors were notified by respondent and his daughter that the account, to be published was absolutely untrue [and i]nstead the [newspaper] proceeded on its reckless course with full knowledge of the harm that would likely result from publication of the article ... [the evidence discloses] ... [a] reckless disregard for the truth...."). However, because the pleading is impermissibly vague, we dismiss it with leave to replead only in the event that the Tuckers are able to allege, in good faith, that their attorney unequivocally told these specific Appellant-newspapers that the loss of consortium claim did not include a claim for loss of sexual relations.

***634** [17] The Tuckers also assert that Appellant-newspapers were reckless in not knowing that the *Tucker II* Complaint did not seek to recover for damage to the Tuckers' sex lives for several additional reasons, none of which is sufficient to prove actual malice by clear and convincing evidence. The Complaint in this case alleges that Appellant-newspapers recklessly disregarded the truth by failing to do research into Mr. and Mrs. Tucker's background, including their ages, years of marriage, religious and moral upbringing, and their emphasis on privacy. (R.R. 38a.) Additionally, the Tuckers allege that Appellant-newspapers acted recklessly by failing to follow selected rules of journalistic ethics including: (1) not relying on biased sources; (2) failing to rely on the best sources; (3) not sensationalizing the news; and, (4) failing to check the sources and accuracy of the stories. *Id.*

[18][19][20] It is clear that a showing of "[a] 'reckless disregard' for the truth ... requires more than a departure from reasonably prudent conduct." *Harte-Hanks*, 491 U.S. at 688, 109 S.Ct. 2678. Failure to check sources, or negligence alone, is simply insufficient to maintain a cause of action for defamation. Recklessness generally and in the context of actual malice is not easily shown. As we have explained:

> The [United States] Supreme Court has emphasized that the question of whether a statement has been published with reckless disregard of falsity is not measured by whether a reasonably prudent man would have [published], or would have investigated before publishing. Rather, (t)here must be sufficient evidence ****136** to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. Thus, while recklessness may be found where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports it simply cannot be concluded that a defendant entertained the requisite doubt as to the veracity of the challenged publication where the publication was based on information a defendant could reasonably believe to be accurate.

Curran, 439 A.2d at 660 (internal citations and quotations omitted). The allegations of recklessness against Appellant-***635** newspapers, at best, present a situation in which one could conclude that perhaps it would have been better if Appellant-newspapers asked the Tuckers or their attorney directly whether their loss of consortium claim included a claim for damage to their sexual relationship. However, while hindsight may be twenty-twenty, this failure does not constitute actual malice. Indeed, it may not rise to the level of negligence.

Conclusion

For the foregoing reasons, the determination of the Superior Court is affirmed in part and reversed in part, and the Tuckers' Complaint is dismissed. The Tuckers are granted leave to replead only to the extent they are able to allege that, before Appellant-newspapers printed the articles, the Tuckers or their representative unequivocally told Appellant-newspapers that their loss of consortium claim did not include a claim that the lyrics damaged their sex lives. "The right to amend should not be withheld where there is some reasonable possibility that amendment can be accomplished successfully." *Otto v. American Mut. Ins. Co.*, 482 Pa. 202, 393 A.2d 450, 451 (1978). In the event that the Tuckers are able to allege notice to Appellant-newspapers, the Tuckers will have stated a cause of action. Based on their current pleading, however, this defamation action is dismissed.

Former Chief Justice ZAPPALA did not participate in the decision of this case.

Justice SAYLOR files a concurring opinion.

Justice NIGRO files a concurring and dissenting opinion in which Justice CASTILLE joins.

CONCURRING OPINION

Justice SAYLOR.

I join the majority opinion, except for its determination that a cause of action would be stated upon the filing of an amended complaint alleging some unequivocal communication ***636** to Appellant-newspapers that the Tuckers' loss of spousal consortium claim did not include a claim for loss of sexual relations. Since the *Tucker II* Complaint was filed as of record and contained a boilerplate claim for loss of consortium, which, by definition encompassed a claim for damage to the Tuckers' sexual relationship, in my view, knowledge on the part of Appellant-newspapers of some greater dem-

onstrated commitment on the part of the Tuckers to a more restricted damages claim would be necessary to implicate the kind of reckless disregard for the truth essential to a defamation claim in the present circumstances.

CONCURRING AND DISSENTING OPINION

Justice NIGRO.

I join the majority insofar as it reasons and concludes that the published statement that the Tuckers claimed $10 million for damages to their sexual relationship was capable of a defamatory meaning. However, I disagree with the majority's decision to dismiss the Tuckers' complaint with leave to replead "only in the event that the Tuckers are able to allege, in good ****137** faith, that their attorney unequivocally told these specific Appellant-newspapers that the loss of consortium claim did not include a claim for loss of sexual relations." Op. at 135. In my view, at this early stage in the proceedings, before any discovery has even taken place, the majority places too great a burden on the Tuckers to plead specific facts underlying their claim of actual malice and, as a result, prematurely limits the facts on which they will be permitted to rely. As the Superior Court below recognized, "proving actual malice calls into question the state of mind of the one who published the allegedly defamatory statement and, therefore, the issue is not one that readily lends itself to summary disposition." 757 A.2d 938, 945-46 (Pa.Super.2000). Given that reality, I would simply overrule the preliminary objections regarding actual malice and would give the Tuckers the opportunity in discovery to uncover facts other than those ***637** already available to establish the Appellant-newspapers' reckless disregard for the truth.

Justice CASTILLE joins.

577 Pa. 598, 848 A.2d 113, 32 Media L. Rep. 1705

Briefs and Other Related Documents (Back to top)

• 2002 WL 32177965 (Appellate Brief) Reply Brief of Appellants Philadelphia Newspapers, Inc., Philadelphia Daily News, and Knight-Ridder, Inc. (Apr. 10, 2002)Original Image of this Document (PDF)

• 2002 WL 32177969 (Appellate Brief) Brief of Appellants Philadelphia Newspapers, Inc., Philadelphia Daily News, and Knight-Ridder, Inc. (Feb. 25, 2002)Original Image of this Document with Appendix (PDF)

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757 A.2d 938
757 A.2d 938, 28 Media L. Rep. 2208, 2000 PA Super 183
(Cite as: 757 A.2d 938)

Briefs and Other Related Documents

Superior Court of Pennsylvania.

C. Delores TUCKER and William Tucker, her husband, Appellants,

v.

PHILADELPHIA DAILY NEWS, Philadelphia Newspapers, Inc.; Knight-Ridder, Inc.; Sports & Entertainment Litigation Reporter; Andrews Publications, Inc.; Legal Communications, Ltd.; Legal Intelligencer; Meridian Venture Partners, L.P.; Baseline II, Inc.; and the Entertainment Litigation Reporter, [FN1]
Appellees.

FN1. The Tuckers' action against several of the parties still listed in this caption has been discontinued by stipulation. The only remaining appellees are Legal Communications, Ltd., and its publication THE LEGAL INTELLIGENCER (hereinafter, LCL); Knight-Ridder, Inc.; and Philadelphia Newspapers, Inc., and its publication PHILADELPHIA DAILY NEWS (hereinafter, PNI) (collectively, appellees).

Argued Feb. 22, 2000.
Filed June 28, 2000.
Reargument Denied Sept. 6, 2000.

Well-known black activist and her husband, who had sued record company and "gangsta rap" musician's estate for,

inter alia, loss of consortium after singer included derogatory lyrics about activist on his album, brought defamation complaint against newspaper and other publishing entities, based on their heavy emphasis of the loss of sexual relations aspect of their loss of consortium claim. The Court of Common Pleas, Philadelphia County, Civil Division, No. 003644 July Term, 1998, Wolf, J., sustained newspaper and publishing entities' preliminary objections in the nature of a demurrer and dismissed the defamation complaint. Activist and her husband appealed. The Superior Court, No. 2121 EDA 1999, Hudock, J., held that: (1) defamation complaint, alleging that activist and her husband had been made objects of ridicule throughout the world, sufficiently alleged actual injury; (2) defamation claim should not have been dismissed before discovery to determine publishers' state of mind was conducted; and (3) headlines that screamed to the public that activist was suing singer because her sex life had been adversely affected by his lyrics did not, on the whole, accurately reflect activist's complaint, and thus, trial court could not properly determine as a matter of law that the fair reporting privilege applied with regard to activist's defamation claim against newspaper.

Reversed and remanded.

McEwen, President Judge, concurred in the result.

West Headnotes

[1] Appeal and Error (KEY) 917(1)

30k917(1) Most Cited Cases

When reviewing dismissal of complaint based upon preliminary objections in the nature of a demurrer, Superior Court treats as true all well-pleaded material, factual averments and all inferences fairly deducible therefrom.

[2] Appeal and Error (KEY) 863

30k863 Most Cited Cases

When reviewing dismissal of complaint based on preliminary objections in nature of a demurrer, the complaint must be examined to determine whether it sets forth a cause of action which, if proven, would entitle the party to the relief sought.

[3] Pleading (KEY) 193(5)

302k193(5) Most Cited Cases

If complaint fails to set forth valid cause of action, a preliminary objection in the nature of a demurrer is properly sustained.

[4] Libel and Slander (KEY) 6(1)

237k6(1) Most Cited Cases

Communications that may annoy or embarrass a person are not sufficient as a matter of law to create an action in defamation.

[5] Libel and Slander (KEY) 54

237k54 Most Cited Cases

Complete defense to all civil actions for libel exists when it is found that a publication is substantially true and is proper for public information or investigation, and such publication has not been maliciously or negligently made. 42 Pa.C.S.A. § 8342.

[6] Libel and Slander (KEY) 19

237k19 Most Cited Cases

When determining whether publication is capable of a defamatory meaning, court must consider the impression that entire article would engender in the minds of the average reader.

[7] Libel and Slander (KEY) 123(2)

237k123(2) Most Cited Cases

Generally, if challenged statement can be reasonably construed as defamatory, complainant has established prima facie case and is entitled to proceed to jury on issues raised.

[8] Libel and Slander (KEY) 123(9)

237k123(9) Most Cited Cases

General rule, that if challenged statement can be reasonably construed as defamatory, complainant has established prima facie case and is entitled to proceed to a jury, does not apply to cases where complainant does not establish specific damages that arose from the alleged defamation, but only shows their personal embarrassment.

[9] Libel and Slander (KEY) 88

237k88 Most Cited Cases

Defamation complaint, brought against publishing entities by well known advocate for black community who had become leader in movement against "gangsta rap" and by her husband, sufficiently alleged actual injury, rather than mere annoyance or embarrassment, by alleging that she and her husband had been made objects of ridicule throughout the world as a result of the publishing entities' heavy emphasis of the loss of sexual relations aspect of their loss of consortium claim against record company and "gangsta rap" musician's estate.

[10] Libel and Slander (KEY) 51(5)

237k51(5) Most Cited Cases

[10] Libel and Slander (KEY) 112(2)
237k112(2) Most Cited Cases

When defamation action concerns public figure, public figure is required to show by clear and convincing evidence that the publication is made with knowledge that statements contained therein are false or with reckless disregard for truth or falsity of the statements; this standard is known as "actual malice."

[11] Libel and Slander (KEY) 51(5)
237k51(5) Most Cited Cases

Actual malice inquiry in defamation actions concerning public figures focuses on whether the publisher, in fact, entertained serious doubts regarding the truth or falsity of the published statements.

[12] Libel and Slander (KEY) 51(5)
237k51(5) Most Cited Cases

Actual malice, as required in defamation actions concerning public figures, is not found merely through showing of ill will or "malice" in the ordinary sense of the term; rather, actual malice requires showing, at a minimum, that the statements were made with reckless disregard for truth.

[13] Libel and Slander (KEY) 4
237k4 Most Cited Cases

Fact that defendant published defamatory material to increase its profits will not suffice to prove actual malice, and falsity, in and of itself, is not sufficient to prove actual malice; rather, actual malice requires a showing, at minimum, that the statements were made with reckless disregard for the truth.

[14] Libel and Slander (KEY) 4
237k4 Most Cited Cases

Proving actual malice calls into question the state of mind of the one who published the allegedly defamatory statement

and, therefore, the issue is not one that readily lends itself to summary disposition.

[15] Pleading (KEY) 193(5)

302k193(5) Most Cited Cases

Whether newspapers acted with malice in publishing story that plaintiff's sex life was ruined by derogatory lyrics in rap song could not be determined before discovery was conducted, and issue was not appropriate for disposition on demurrer.

[16] Libel and Slander (KEY) 42(1)

237k42(1) Most Cited Cases

Newspaper has qualified privilege to make fair and accurate report of judicial proceedings, including reporting on judicial pleadings, if the article is not published solely for purpose of causing harm to person being reported on.

[17] Libel and Slander (KEY) 50.5

237k50.5 Most Cited Cases

Newspaper's qualified privilege to make fair and accurate report of judicial proceedings may be overcome by overly embellishing an account of a proceeding.

[18] Libel and Slander (KEY) 50.5

237k50.5 Most Cited Cases

To determine whether newspaper's privilege to make fair and accurate report of judicial proceedings has been overcome, question becomes whether a reasonable person, comparing the complaint and the article as a whole, could conclude that the article was a fair and accurate rendition of the complaint.

[19] Libel and Slander (KEY) 123(8)

237k123(8) Most Cited Cases

Whether a communication is conditionally privileged is a matter for the court to determine, but whether a privilege is abused is a question for the jury, although court may rule

on the issue if evidence is so clear that no reasonable person would determine the issue in any way but one.

[20] Libel and Slander (KEY) 42(1)

237k42(1) Most Cited Cases

Action for defamation cannot be premised solely on newspaper's style or utilization of vivid words in reporting a judicial proceeding; the fair report privilege does not require that newspaper account contain verbatim recitation of document being reported on, but merely requires that summary of that document that is substantially accurate.

[21] Libel and Slander (KEY) 42(1)

237k42(1) Most Cited Cases

Whether newspapers abused fair reporting privilege from defamation by publishing story that plaintiff's sex life was ruined by derogatory lyrics in rap song, when her suit against singer claimed loss of consortium, was for jury.

***940** Richard C. Angino, Harrisburg, for appellants.

Jonathan F. Ball, Philadelphia, for Legal Communications, appellee.

Amy B. Ginensky, Philadelphia, for Phil. Daily News, appellee.

Before McEWEN, President Judge, HUDOCK, J. and CIRILLO, President Judge Emeritus.

HUDOCK, J.:

¶ 1 C. Delores Tucker and her husband, William, (the Tuckers) appeal from the order sustaining preliminary objections in the nature of a demurrer filed by the appellees and dismissing the Tuckers' defamation complaint. We reverse and remand for further proceedings consistent with this opinion.

¶ 2 The facts underlying this action were accurately summarized by the trial court in its opinion filed pursuant to Pennsylvania Rule of Appellate Procedure 1925(a) and are not in

dispute. For purposes of this opinion, we reproduce these facts below, deleting citations and footnotes that refer to supporting documentation:

> [C. Delores] Tucker is a nationally known and outspoken advocate for the black community. In 1993, she became a leader in a movement against "gangsta rap." Gangsta rap is known for its emphasis on violence, sex, drugs and criminal behavior. In her quest to stop the distribution of gangsta rap, Tucker became particularly focused on the work of Tupac Shakur, a noted gangsta rapper. A series of lawsuits between Tucker, Shakur, and certain record producers ensued.
>
> Sometime after the first lawsuit, Shakur included derogatory lyrics about Tucker on one of his albums. One song called Tucker a "m— f— [.]" Tucker claims that another song suggested that Tucker had "sold out" to the white establishment and invoked images of prostitution. In 1997, Tucker sued the estate of Shakur and the record companies responsible for distributing his records in the Eastern District of Pennsylvania. ***941** The lawsuit named the record companies as the principal wrongdoers in the action. Tucker claimed defamation of character, severe emotional distress and related pain and suffering. Tucker's husband joined her lawsuit against the record companies, claiming that his wife's injuries caused him to suffer a loss of advice, companionship and consortium.
>
> As a result of both Tucker's and Shakur's notoriety, the media, including the [appellees], gave headline attention to Tucker's lawsuit. Both [PNI and LCL] published similar articles. LCL reported that Tucker claimed "anguish caused by the lyrics diminished her sex life with her husband;" PNI in its headline stated that "[Shakur's] lyrics had caused her mental anguish and

diminished her sex life." Both [appellees] published a quotation from an attorney for Shakur's estate stating: "It's hard for me to conceive how these lyrics could destroy her sex life. But we can only wait for the proof to be revealed in court."

[C. Dolores] Tucker claims that the [appellees] distorted and sensationalized the facts of her complaint by focusing only on her claim against Shakur and her sex life. In addition, she claims that the [appellees] recklessly published their stories by ignoring her press release and failing to contact her attorneys or misrepresenting their statements. Tucker stated that the [appellees] portrayed the complaint as solely against Shakur and focused improperly on her claim that the lyrics on Shakur's album destroyed her sex life.

Furthermore, Tucker claims that the [appellees] should have known, given the Tuckers' reputation for morality and lawfulness, that the Tuckers would never have sued solely on the basis that rap lyrics destroyed their sexual relationship.

The Tuckers assert that the [appellees] have slandered them, defamed them and made them objects of ridicule. As evidence of the [appellees'] wrongdoing, the Tuckers claim that they cannot go anywhere or do anything without friends, relatives and strangers questioning them about the "ridiculous" lawsuit. The Tuckers demand $1 Million from each [appellee].

Trial Court Opinion, 8/13/99, at 1-3.

¶ 3 Both LCL and PNI filed preliminary objections in the nature of a demurrer, arguing that the Tuckers had not established a *prima facie* cause of action sounding in defamation and requesting that the complaint be dismissed. The trial court agreed with the appellees' arguments and dismissed the complaint on June 16, 1999. This appeal followed.

¶ 4 The Tuckers raise the following issue on appeal, which contains three sub-parts:

> DID THE TRIAL COURT ERR WHEN IT GRANTED [APPELLEES'] PRELIMINARY OBJECTIONS DISMISSING [THE TUCKERS'] COMPLAINT ON THE BASES THAT:
>
> 1. She has not presented evidence that her reputation was actually damaged, only that she feels ridiculed when people ask her about the *Shakur* case. She does not contend that people have stopped asking her to speak at public engagements or provide other indicators that her position in the community has diminished.
>
> 2. Tucker failed to show actual malice because she provided no evidence that the authors had knowledge that their statements were false or acted with reckless disregard for the truth. Furthermore, their statements were not false ...
>
> 3. While LCL did lead its story with the "spiced up" statement "Tuckers' diminished sex life", the article on the whole, "accurately reflected Tucker's Complaint.["] Also proving abuse of the privilege requires proof that the sole purpose of the article was to humiliate [Tucker].

The Tuckers' Brief at 2.

[1][2][3] ¶ 5 When reviewing the dismissal of a complaint based upon preliminary objections ***942** in the nature of a demurrer, we treat as true all well-pleaded material, factual averments and all inferences fairly deducible therefrom. *McArdle v. Tronetti*, 426 Pa.Super. 607, 627 A.2d 1219, 1221 (1993). The complaint must be examined to determine whether it sets forth a cause of action which, if proven, would entitle the party to the relief sought. *Id.* Where the complaint fails to set forth a valid cause of action, a preliminary

objection in the nature of a demurrer is properly sustained. *Id.*

[4][5] ¶ 6 The Tuckers contend that the trial court erred in concluding that their complaint did not set forth a valid cause of action because the articles were capable of defamatory meaning and that such meaning did not have to be proven at this point in the proceedings.

> This Court has stated the elements of a defamation action in the following manner:
>
> In an action for defamation, the plaintiff must prove: (1) the defamatory character of the communication; (2) publication by the defendant; (3) its application to the plaintiff; (4) understanding by the recipient of its defamatory meaning; (5) understanding by the recipient of it as intended to be applied to plaintiff; (6) special harm to the plaintiff; (7) abuse of a conditionally privileged occasion. [*See* 42 Pa.C.S.A. § 8343(a).] Initially, it is the function of the court to determine whether the communication complained of is capable of a defamatory meaning. A communication is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him. A communication is also defamatory if it ascribes to another conduct, character or a condition that would adversely affect his fitness for the proper conduct of his proper business, trade or profession. If the court determines that the challenged publication is not capable of a defamatory meaning, there is no basis for the matter to proceed to trial; however, if there is an innocent interpretation and an alternate defamatory interpretation, the issue must proceed to the jury.
>
> *Maier v. Maretti*, 448 Pa.Super. 276, 671 A.2d 701, 704 (1995) (citations omitted). Further, when determin-

> ing whether a communication is defamatory, the court will consider what effect the statement would have on the minds of the average persons among whom the statement would circulate. *Id.* "The words must be given by judges and juries the same significance that other people are likely to attribute to them." *Id.*

Rush v. Philadelphia Newspapers, Inc., 732 A.2d 648, 651-52 (Pa.Super.1999). "It is also important to note [that] communications which may annoy or embarrass a person are not sufficient as a matter of law to create an action in defamation." *Maier*, 671 A.2d at 704. *See also Gordon v. Lancaster Osteopathic Hosp. Ass'n.*, 340 Pa.Super. 253, 489 A.2d 1364, 1369 (1985) (same). Further, a complete defense to all civil actions for libel exists when it is found that a publication is substantially true and is proper for public information or investigation, and such publication has not been maliciously or negligently made. 42 Pa.C.S.A. § 8342.

¶ 7 As we have already stated, the first paragraph in the article in the PHILADELPHIA DAILY NEWS notes that Mrs. Tucker's suit claimed Shakur's lyrics caused her mental anguish and diminished her sex life. Jamal E. Watson and Jim Smith, *Suit: Tupac dead wrong*, PHILADELPHIA DAILY NEWS, August 2, 1997, at 5, attached as exhibit C to the Tuckers' Brief. The cover of the newspaper included a picture of Mrs. Tucker with the headline, "A Dirty Rap, Suit v. Shakur estate says 'vile' lyrics ruined her rep—and her sex life."

Further, the article notes that Mrs. Tucker charged in her complaint that Shakur's recording caused her great humiliation, ***943** mental pain and suffering, and that the complaint contained an allegation that Mr. Tucker suffered a loss of advice, companionship and consortium due to Shakur's lyrics. The article from THE LEGAL INTELLIGENCER is

headlined, "Gangsta Rap Critic Sues Shakur Estate For Album's Derogatory References." THE LEGAL INTELLIGENCER, August 4, 1997, at 6, attached as Exhibit E to The Tuckers' Brief. The article states that Mrs. Tucker's suit claims "among other things, that the anguish caused by the lyrics diminished her sex life with her husband." *Id.* Thereafter, the same language from the PHILADELPHIA DAILY NEWS' article quoted above is used. Both articles also contain the quote from the attorney for Shakur's estate to the effect that he can't fathom how the allegedly offensive lyrics could destroy Mrs. Tucker's sex life.

¶ 8 The Tuckers first maintain on appeal that the court erred when it determined that the newspaper articles were incapable of defamatory meaning. They claim that the articles in question were clearly defamatory because they put a distorted defamatory sexual spin on the claims made in the underlying complaint. The Tuckers maintain that this distortion has undermined a lifetime of work in the community. Further, they allege that, although a diminished sex life may be a part of a loss of consortium claim, this is only a small portion of the instant claim and "the media cannot treat every consortium claim as a claim for damage to one's sexual relations with one's spouse." The Tuckers' Reply Brief at 12.

¶ 9 BLACK'S LAW DICTIONARY, seventh edition, p. 304, defines consortium, in pertinent part, as follows:

> **consortium 1.** The benefits that one person, esp. a spouse, is entitled to receive from another, including companionship, cooperation, affection, aid, and (between spouses) sexual relations <a claim for loss of consortium>.

Thus, the Tuckers cannot deny that a loss of consortium claim may include a claim that sexual relations between spouses have been affected by the responsible party's ac-

tions. Nor can the Tuckers maintain that their complaint in the Shakur suit did not include a count for loss of consortium. Rather, the Tuckers allege that the fact that the stories focused on the sexual aspect of the claim in the published reports, to the exclusion of other things was erroneous and caused them harm.

[6] ¶ 10 When determining whether a publication is capable of a defamatory meaning, the court must consider the impression that the entire article would engender in the minds of the average reader. *Green v. Mizner,* 692 A.2d 169, 172 (Pa.Super.1997).

> A publication is defamatory if it tends to blacken a person's reputation or expose him to public hatred, contempt, or ridicule, or injure him in his business or profession. When communications tend to lower a person in the estimation of the community, deter third persons from associating with him, or adversely affect his fitness for the proper conduct of his lawful business or profession, they are deemed defamatory.

Id. (citations omitted). Further, "[f]or purposes of the threshold determination whether a communication could be understood as defamatory, it is not necessary for the communication actually to have caused harm to reputation; defamatory character depends on the general tendency of the words to have such an effect." *Agriss v. Roadway Exp., Inc.,* 334 Pa.Super. 295, 483 A.2d 456, 461 (1984).

¶ 11 In the present case, the Tuckers stress that the emphasis in the articles on the one possible component of a loss of consortium claim, to the exclusion of the other ingredients, creates an impression that will expose the Tuckers to public hatred and ridicule. We agree with the Tuckers' assertion that, because of their advanced age and their reputation as people of strong morals, the suggestion in the news-

paper articles that the Tuckers are °**944** overly concerned with sexual matters could be capable of defamatory meaning.

This does not end our inquiry, however.

[7][8] ¶ 12 The Tuckers are correct in noting that the general rule in this state is that, "if a challenged statement can be reasonably construed as defamatory, a complainant has established a prima facie case and is entitled to proceed to a jury on the issues raised." *Green,* 692 A.2d at 174. This general rule does not apply, however, to cases where the complainant does not establish specific damages that arose from the alleged defamation, but only shows their personal embarrassment. *Parano v. O'Connor,* 433 Pa.Super. 570, 641 A.2d 607, 609 (1994) (stating that even though the statements made might have been annoying or embarrassing to the appellant, personal annoyance or embarrassment are not the sorts of injury that will support a defamation claim). In the present case, because this matter was decided by the grant of a demurrer, we must review the Tuckers' complaint to determine whether the defamation claim against the appellees is based solely on the Tuckers' annoyance or embarrassment. The complaint avers that:

> 57. [Appellees] knew, should have known, and/or were reckless in not knowing that the Tuckers' July 21, 1997 lawsuit and the Tuckers did not claim they were entitled to $10 million because lewd lyrics destroyed their sex lives.
>
> °°°
>
> 60. All of the [appellees] have slandered and defamed [the Tuckers] by making the Tuckers objects of ridicule in the world, and all of the [appellees] have done so with knowledge or reckless disregard of the truth or falsity of the articles.

> 61. All of the [appellees] have put [the Tuckers] in a false light by portraying the Tuckers as individuals bringing a frivolous lawsuit, contending that lewd lyrics destroyed their sex lives, and consequently they are entitled to $10 million.
>
> 62. All of the [appellees'] slanderous stories have snowballed and mushroomed to the point of hundreds of articles ridiculing and demeaning [the Tuckers] throughout the world.
>
> 63. [The Tuckers] cannot go anywhere or do anything without friends, relatives, acquaintances, and even strangers questioning the Tuckers as to why they brought such a ridiculous lawsuit.

Complaint, dated 7/29/98.

¶ 13 The trial court found that the allegations contained in the complaint did not set forth a cause of action in defamation because the essence of their complaint is that the Tuckers have become objects of ridicule and that they are embarrassed by the continued publication of stories that allude to their sex life. The Tuckers are discomfited by the need to answer questions regarding these articles to family, friends, and business acquaintances. The question thus becomes whether these damages constitute a harm to the Tuckers that goes beyond personal embarrassment.

¶ 14 The concept of actual harm in terms of a defamation action was explained by a panel of this Court in *Agriss*, 483 A.2d at 467. Quoting from the United States Supreme Court landmark decision of *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974), the *Agriss* Court stated:

> "Actual injury is not limited to out-of-pocket loss. Indeed, the more customary types of actual harm inflicted by defamatory falsehood include impairment of reputation and standing in the community, personal hu-

> miliation, and mental anguish and suffering. Of course, juries must be limited by appropriate instructions, and all awards must be supported by competent evidence concerning the injury, although there ***945** need be no evidence which assigns an actual dollar value to the injury."

Agriss, 483 A.2d at 467.

[9] ¶ 15 Based upon the quoted language above, we conclude that the Tuckers have set forth in their complaint sufficient allegations of an actual injury. We recognize that the issue of determining whether the alleged defamatory publication is a "mere annoyance or embarrassment" on the one hand, or sufficient to establish "personal humiliation and mental anguish and suffering" on the other hand is sometimes difficult. The difference between these two standards appears to be a matter of degree. In a case such as the present one, where we must treat as true all well-pleaded factual averments and fairly deducible inferences in order to determine whether a complaint has set forth a valid cause of action, this Court must carefully consider the damages pleaded. In the present case, the Tuckers alleged that they have been made objects of ridicule throughout the world. Such a sweeping allegation is more than a mere annoyance or embarrassment. Thus, we conclude that the Tuckers' complaint sets forth a *prima facie* case of defamation. The trial court erred when it reached a contrary conclusion.

[10][11] ¶ 16 The Tuckers next assert that the trial court erred in requiring them to provide proof of actual malice in the complaint. It cannot be disputed that when a defamation action concerns a public figure, such public figure is required to show by clear and convincing evidence that the publication is made with knowledge that the statements contained therein are false or with reckless disregard for the truth or

falsity of the statements. *Coleman v. Philadelphia Newspapers, Inc.*, 391 Pa.Super. 140, 570 A.2d 552, 555 (1990) (citing *New York Times v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964), and *Curran v. Philadelphia Newspapers, Inc.*, 376 Pa.Super. 508, 546 A.2d 639 (1988)). This standard is known as "actual malice." *Id.* The actual malice inquiry focuses on whether the publisher, in fact, entertained serious doubts regarding the truth or falsity of the published statements. *Id.* at 557.

[12][13][14] ¶ 17 Actual malice is not found merely through a showing of ill will or "malice" in the ordinary sense of the term. *Reiter v. Manna*, 436 Pa.Super. 192, 647 A.2d 562, 567 (1994). " 'Nor can the fact that the defendant published the defamatory material in order to increase its profits suffice to prove actual malice.' " *Id.* (quoting *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 666-67, 109 S.Ct. 2678, 105 L.Ed.2d 562 (1989)). Moreover, falsity, in and of itself, is not sufficient to prove actual malice. *Curran, supra*, 546 A.2d at 642. Rather, actual malice requires a showing, at minimum, that the statements were made with a reckless disregard for the truth. *Reiter*, 647 A.2d at 567.

> Reckless disregard, it is true, cannot be fully encompassed in one infallible definition. Inevitably its outer limits will be marked out through case-by-case adjudication. The cases are clear, however, that reckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. A showing of no more that negligence, carelessness, bad judgment or inaccuracy in the preparation and publication of an allegedly defamatory com-

munication is insufficient to show the recklessness needed to prove actual malice.

Raffensberger v. Moran, 336 Pa.Super. 97, 485 A.2d 447, 453 (1984) (internal citations and quotation marks omitted). We note, however, that proving actual malice calls into question the state of mind of the one who published the allegedly defamatory statement and, therefore, the issue is not ***946** one that readily lends itself to summary disposition. *Id.* at 454.

[15] ¶ 18 In the present case, the Tuckers contend that a jury could find that the appellees had misrepresented the underlying Shakur complaint in their news articles, and this supports the conclusion that actual malice is apparent. In essence, the Tuckers maintain that, had the appellees more thoroughly investigated the complaint and its allegations, they would have known that the complaint contained more than the consortium claim and would have more fairly covered the entire complaint. The Tuckers maintain that a comparison of the complaint, the Tuckers' news release and the published stories will reveal that the newspapers acted with more than mere negligence when they published the articles which indicated that the complaint only encompassed the claim that the Tuckers' sex life was ruined by the derogatory lyrics. We agree with the Tuckers that the trial court erred by dismissing the complaint based upon the appellees' preliminary objections. At this stage in the proceedings, it would be impossible for the Tuckers to establish the state of mind of the appellees when they published the stories.

Information relating to the appellees' investigation or other publication safeguards cannot be determined before discovery has been conducted. Therefore, we conclude that the trial court acted prematurely in this instance.

[16][17] ¶ 19 As their final issue on appeal, the Tuckers also allege that a jury could have found that the appellees

had abused the fair reporting privilege in failing to accurately report on the Shakur complaint and that the court erred in requiring proof that the privilege was abused at this stage in the proceedings. A newspaper has a qualified privilege to make a fair and accurate report of judicial proceedings, including reporting on judicial pleadings such as the complaint in the instant case, if the article is not published solely for the purpose of causing harm to the person being reported on. *Binder v. Triangle Publications, Inc.*, 442 Pa. at 324, 275 A.2d at 56. "The Pennsylvania Supreme Court has recognized that if the account is fair, accurate and complete, and not published solely for the purpose of causing harm to the person defamed, it is privileged and no responsibility attaches, even though information contained therein is false or inaccurate." *Oweida v. Tribune-Review Pub. Co.*, 410 Pa.Super. 112, 599 A.2d 230, 233-34 (1991) (citations and internal quotation marks and alterations deleted). However, this qualified privilege may be overcome by overly embellishing an account of a proceeding. *Binder*, 442 Pa. at 324, 275 A.2d at 56.

[18][19][20] ¶ 20 To determine whether the privilege has been overcome, the question becomes whether a reasonable person, comparing the complaint and the article as a whole, could conclude that the article was a fair and accurate rendition of the complaint. *First Lehigh Bank v. Cowen*, 700 A.2d 498, 503 (Pa.Super.1997). Whether a communication is conditionally privileged is a matter for the court to determine. *Id.* Whether a privilege is abused is a question for the jury; however, the court may rule on the issue if the evidence is so clear that no reasonable person would determine the issue in any way but one. *Id.* Finally, "[a]n action for defamation cannot be premised solely on [the newspaper's] style or utilization of vivid words in reporting a judicial proceeding."

Binder, 442 Pa. at 327, 275 A.2d at 58. The fair report privilege does not require that the newspaper account contain a verbatim recitation of the document being reported on, it merely requires a summary of that document that is substantially accurate. *First Lehigh Bank, supra*, at 502.

[21] ¶ 21 The trial court held that the articles in question, on the whole, accurately reflected the Tuckers' complaint. For the reasons stated above, we disagree with this assessment. The complaint in question contained many allegations, and yet ***947** the published headlines screamed to the public that Mrs. Tucker was suing the rap singer because her sex life had been adversely affected. As stated above, a consortium claim encompasses more than just the quality of the sexual lives of a married couple. The articles, at the least, created a false impression regarding the complaint filed. We cannot say, as a matter of law, that the articles contained a "fair, accurate and complete" account of the complaint.

¶ 22 For all of the forgoing reasons, we reverse the order that sustained the preliminary objections in the nature of a demurrer that were filed by the appellees, the newspapers, and remand this matter for additional proceedings consistent with this opinion.

¶ 23 Order reversed. Case remanded. Jurisdiction relinquished.

¶ 24 McEWEN, President Judge, concurs in the result.

757 A.2d 938, 28 Media L. Rep. 2208, 2000 PA Super 183

Briefs and Other Related Documents (Back to top)

• 1999 WL 33886484 (Appellate Brief) Reply Brief of Appellants (Dec. 03, 1999)Original Image of this Document with Appendix (PDF)

• 1999 WL 33886486 (Appellate Brief) Brief of Appellees Philadelphia Daily News, Philadelphia Newspapers, Inc. and

Knight Ridder, Inc. (Nov. 19, 1999)Original Image of this Document with Appendix (PDF)

• 1999 WL 33886485 (Appellate Brief) Brief of Appellees Legal Communications, Ltd. and Legal Intelligencer (Jan. 20, 1999)Original Image of this Document (PDF)

• 1999 WL 33886483 (Appellate Brief) Appellant's Brief (1999)Original Image of this Document with Appendix (PDF)

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IN THE COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY
CIVIL DIVISION
JULY TERM, 1998

No. 003644

C. DELORES TUCKER and WILLIAM TUCKER, h/w
v.
PHILADELPHIA NEWSPAPERS, INC. and LEGAL
COMMUNICATIONS, LTD

OPINION

WOLF, J. August 13, 1999

Facts

This appeal arises from an order entered June 16, 1999 sustaining Preliminary Objections in the nature of a demurrer and request for dismissal filed by Defendants Philadelphia Newspapers, Inc. ("PNI") and Legal Communications, Ltd. ("LCL").

The facts of this case, based on the Plaintiff's Complaint, *see Kaplan v. Cablevision of Pa., Inc.*, 671 A.2d 716, 718 (Pa. Super. 1996) (when sustaining a preliminary motion in the nature of a demurrer, the court must accept as true all well-pleaded facts contained in the complaint together with all reasonable inferences that may be deduced), are as follows:

Tucker is a nationally known and outspoken advocate for the black community. In 1993, she became a leader in a movement against "gangsta rap." (Pl. Brief at 1). Gangsta rap is known for its emphasis on violence, sex, drugs and criminal behavior. *Id.* In her quest to stop the distribution of gangsta rap, Tucker became particularly focused on the work of Tupac Shakur, a noted gangsta rapper. *Id.* at 3. A series of

lawsuits between Tucker, Shakur, and certain record producers ensued.[1]

Sometime after the first lawsuit, Shakur included derogatory lyrics about Tucker on one of his albums. *Id.* at 2. One song called Tucker a "m___ f___". *Id.* at 3. Tucker claims that another song suggested that Tucker had "sold out" to the white establishment and invoked images of prostitution. *Id.* In 1997, Tucker sued the estate of Shakur and the record companies responsible for distributing his records in the Eastern District of Pennsylvania. (Pl. Complaint, ¶ 16).[2] The lawsuit named the record companies as the principal wrongdoers in the action. (Pl. Complaint ¶ 39). Tucker claimed defamation of character, severe emotional distress and related pain and suffering. (Pl. Complaint, ¶ 26). Tucker's husband joined her lawsuit against the record companies, claiming that his wife's injuries caused him to suffer a loss of advice, companionship and consortium (Pl. Complaint, ¶ 50).

As a result of both Tucker's and Shakur's notoriety, the media, including the defendants in this case, gave headline attention to Tucker's lawsuit. (Pl. Complaint ¶62). Both defendants, Philadelphia Newspapers, Inc. (PNI) and Legal Communications, Ltd. (LCL), published similar articles. LCL reported that Tucker claimed "anguish caused by the lyrics diminished her sex life with her husband;" PNI in its headline stated that "[Shakur's] lyrics had caused her mental anguish and diminished her sex life." (PNI Brief Exhibits A, B). Both defendants published a quotation from an attorney for Shakur's estate stating: "It's hard for me to conceive how these

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[1] Two companies involved in the recording of Shakur's music brought lawsuits against Tucker claiming, in a California court, that she had attempted to induce a breach of contract against the two companies. The court dismissed these actions. (Pl. Brief at 2). See Addendum for a chart of the related Tucker suits.

[2] The suit, *Tucker v. MTS, Inc*, C.A. No. 97CV-4717 (E.D. Pa. 1999), is on appeal.

lyrics could destroy her sex life. But we can only wait for the proof to be revealed in court." (PNI's Brief Exhibit A).

Tucker claims that the defendants distorted and sensationalized the facts of her complaint by focusing only on her claim against Shakur and her sex life. (Pl. Complaint ¶42). In addition, she claims that the defendants recklessly published their stories by ignoring her press release and failing to contact her attorneys or misrepresenting their statements. (Pl. Complaint ¶¶40, 48-49). Tucker stated that the defendants portrayed the complaint as solely against Shakur and focused improperly on her claim that the lyrics on Shakur's album destroyed her sex life. (Pl. Complaint ¶39). Furthermore, Tucker claims that the Defendants should have known, given the Tuckers' reputation for morality and lawfulness, that the Tuckers would never have sued solely on the basis that rap lyrics destroyed their sexual relationship. (Pl. Complaint ¶59).

The Tuckers assert that the Defendants have slandered them, defamed them and made them objects of ridicule. (Pl. Complaint ¶60). As evidence of the defendants' wrongdoing, the Tuckers claim that they cannot go anywhere or do anything without friends, relatives and strangers questioning them about the "ridiculous" lawsuit. (Pl. Complaint ¶63). The Tuckers demand $1 Million from each Defendant. (Pl. Complaint at 17).

On March 19, 1999, two Defendants, Legal Communications, Ltd. and Philadelphia Newspapers, Inc. filed Preliminary Objections, asserting that Tucker had failed to state a claim for which relief could be granted pursuant to Pa.R.C.P. 1028(a)4. Defendant PNI also asserted that even if Tucker's claim was legally sufficient, the matter should be dismissed under Pa.R.C.P. 1028(a)3 because the Complaint failed adequately to inform the Defendant of the charges. On June 16, 1999, this Court sustained the Defendants' Preliminary

Objections and dismissed all claims against them, under Rule 1028(a)4. As a result, the Court did not rule on PNI's alternate Preliminary Objection. This appeal was timely filed on July 14, 1999.

Discussion

Under Pa.R.C.P. 1028(a)4, any party may file preliminary objections in the nature of a demurrer alleging that the pleadings are legally insufficient. Preliminary objections in the nature of a demurrer admit as true all well and clearly pleaded material, factual averments and all reasonable inferences deduced from the pleadings. *Kaplan v. Cablevision of Pa., Inc.*, 671 A.2d 716, 719 (Pa. Super. 1996). Starting from this point of reference, the complaint must be examined to determine whether it sets forth a cause of action which, if proven, would entitle the party to the relief sought. *Mack Trucks v. Performance Assoc.*, 533 A.2d 412, 413 (Pa. Super. 1989). When the complaint fails to set forth such a cause of action, a preliminary objection in the nature of a demurrer is properly sustained. *Id.*

The parties raised the following issues in their briefs:[3] whether the articles were defamatory, whether the defendants had acted with actual malice, and whether under the fair reporting privilege, the defendants were entitled to print defamatory articles about the plaintiff. This Court found that

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[3] The Defendants raise the additional issue of collateral estoppel. Judge Buckwalter of the Eastern District of Pennsylvania presided over Tucker's suit against *Time* and *Newsweek* magazines for similar coverage of Tucker's original lawsuit against Shakur. Both LCL and PNI's briefs strongly suggest that Judge Buckwalter's decision should preclude this Court from hearing Tucker's claim based on the doctrine of collateral estoppel. However, collateral estoppel does not apply here. Among other elements, collateral estoppel requires that the facts of the previous case and the instant case be identical. *Schubach v. Silver*, 336 A.2d 328, 333 (Pa. 1975). The articles of *Time* and *Newsweek* were similar, but not identical to those published by the Defendants. Furthermore, because this Court must look only to the facts averred in the Complaint, the issue of collateral estoppel is not reached.

Tucker, as a public figure, failed to prove that the Defendants' articles were defamatory, that the Defendants acted with malice or that the fair reporting privilege did not apply.

A. Defamatory Nature of Articles

In an action for defamation, the plaintiff has the burden of proving:

> 1. The defamatory character of the communication;
> 2. Its publication by the defendant;
> 3. Its application to the plaintiff;
> 4. The understanding by the [reader] of its defamatory meaning;
> 5. The understanding by the [reader] of it as applied to the plaintiff;
> 6. Special harm resulting to the plaintiff from its publication; and
> 7. Abuse of a conditionally privileged occasion. 42 Pa.C.S. §8343(a).

No discussion of elements 2, 3 and 5 is needed because there is no dispute that the articles were published by the defendants or concerned the plaintiff.

The first issue the Defendants raise is whether the statements published in their newspapers were defamatory. A communication will be considered defamatory if it tends to "so harm the reputation of another as to lower him in the estimation of the community or to deter a third person from associating . . . with him" *Corabi v. Curtis Publishing Co.*, 273 A.2d 899, 904 (Pa. 1971). In deciding whether a communication is defamatory, a court must look to the effect the article is calculated to produce in the mind of the average reader of the newspaper. *Corabi*, 272 A.2d at 907. The Pennsylvania Supreme Court has interpreted this standard to mean that plaintiffs must prove that the harm suffered from "grievously fractured [their] standing in the community of respectable society." *Scott-Taylor, Inc. v. Stokes*, 229 A.2d 733, 734

(Pa. 1967). A statement will not be construed as defamatory merely because it is annoying and embarrassing to the plaintiff. Embarrassment alone does not constitute defamation. *Id.*, citing *McAndrew v. Scranton Republic Publishing Co.*, 72 A.2d 780 (Pa. 1950).

Based on the information set forth in the complaint and relevant case law, Tucker has failed to state a cause of action for defamation. She has not presented evidence that her reputation was actually damaged, only that she feels ridiculed when people ask her about the *Shakur* case.[4] She does not

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[4] LCL's article and headline starts "Gangsta Rap Critic Sues Shakur Estate For Album's Derogatory References—A woman who built a national reputation for criticizing the violent lyrics of gangsta rap has sued the estate of Tupac Shakur, saying one of his albums made derogatory references to her. C. Delores Tucker filed the suit last week in Philadelphia federal court, claiming among other things, that the anguish caused by the lyrics diminished her sex life with her husband. Shakur's 'All Eyez on Me'... caused Mrs. Tucker 'great humiliation, mental pain and suffering,' according to the lawsuit. It also says the injuries caused her husband, William, to 'suffer a loss of advice, companionship and consortium.' Mrs. Tucker, who is asking for $10 million in the suit, could not be reached for comment Thursday. Richard Fischbein, A new York attorney who is co-administrator of the estate, said he is baffled by the suit. 'It is hard for me to conceive how these lyrics could destroy her sex life,' Fischbein said. 'But we can only wait for the proof to be revealed in court.'" The article finishes by recounting which songs offended the Tuckers, highlighting Tucker's career, and listing the other named parties in the suit. (Legal Intelligencer, August 4, 1997 at 6.)

PNI's page one article with picture stated "A DIRTY RAP— Suit vs. Shakur estate says "vile" lyrics ruined her rep—and her sex life—C. Delores Tucker has filed a $10 million lawsuit against Tupac Shakur's estate saying some of the late rapper's lyrics caused her mental anguish and diminished her sex life. Tucker filed the lawsuit this week in Philadelphia federal court, charging that Shakur's record breaking 1996 CD 'All Eyez on Me' caused her 'great humiliation, mental pain and suffering.' 'She was really called a lot of bad names,' said Tucker's Harrisburg attorney, Richard C. Angino. 'It was done to intimidate her.' It also says the injuries caused her husband, William, to suffer 'a loss of advice, companionship and consortium' Richard Fischbein, A new York attorney who is co-administrator of the estate, said he is baffled by the suit. 'It is hard for me to conceive how these lyrics could destroy her sex life,' Fischbein said. 'But we can only wait for the proof to be revealed in court.'" This article continues with details of Tucker's career, her reasons for filing the suit and comments of both her critics and supporters. (Philadelphia Daily News, August 2, 1997 at 5.)

contend that people have stopped asking her to speak at public engagements or provide other indicators that her position in the community has diminished. The only harm that Tucker alleges is that people question her about the lawsuit. Her embarrassment from the questions does not rise to the level of harming her reputation or deterring third parties from associating with her. Because Tucker's complaint failed to show any defamation resulted from the publication of their articles, the Defendants' Preliminary Objections are properly sustained.

B. Actual Malice

Moreover, as a public figure, Tucker must pass an additional level of consideration. Even assuming that the statements were defamatory, she must prove by clear and convincing evidence both that the defamatory statement was false and that the defendant published it with actual malice or reckless disregard for the truth. *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 773 (1986). Actual malice requires that a statement be made with actual knowledge that it was false or with reckless disregard as to its falsity. *New York Times v. Sullivan*, 376 U.S. 254, 281 (1964). In other words, to prove actual malice, the plaintiff must prove by clear and convincing evidence that the defendants realized the statement was false or that they entertained serious doubt about the truth of their statements but proceeded to publish it despite these doubts. *Oweida v. Tribune Review*, 599 A.2d 230 (Pa. Super. 1991), appeal denied, 603 A.2d 334 (Pa. 1992). Mere negligent or careless factfinding alone is not evidence of actual malice. *Reiter v. Manna*, 647 A.2d 562, 566 (Pa. Super. 1994).

Clearly, Tucker is a public figure. "A public figure is a person who through fame, notoriety of achievements or through voluntary participation in resolution of important

public question, seeks to influence people." *Time, Inc. v. Firestone,* 424 U.S. 448, 453 (1976). By her own admission, she is well known, often asked to speak to the public on a wide variety of topics, and has been honored both by her community and the public at large. (Pl. Complaint ¶¶ 1-2). Tucker failed to show actual malice because she provided no evidence that the authors had knowledge that their statements were false or acted with reckless disregard for the truth. Furthermore, their statements were not false. The dictionary definition of loss of consortium includes loss of sexual relations with one's spouse. BLACK'S LAW DICTIONARY 309 (6th ed. 1990). Even in the standard Pennsylvania civil jury instruction loss of consortium is defined as the loss of the injured party's services and companionship. Pa.S.S.J.I. (Civ.) 6.01L. Thus, while the emphasis selected by the Defendants might be embarrassing and even surprising for the Plaintiffs, it is true that the Tucker complaint explicitly sought damages for loss of consortium Finally, while the Defendants' failure to contact Tucker's attorney or to check the veracity of the information in their article may have been careless, their actions did not reach the level of actual malice. For these reasons, the Defendants' motion is properly sustained.

C. Fair Reporting Privilege

Finally, LCL argues that even if its article was defamatory, it is protected by the fair reporting privilege. The fair reporting privilege protects publications if the account, taken as a whole, is fair, accurate, and not published solely for the purpose of causing harm to the person defamed. *Oweida,* 599 A.2d at 233-34. The privilege extends specifically to information contained in private civil complaints and initial pleadings. *First Lehigh Bank v. Cohen,* 700 A.2d 498 (Pa. Super. 1997). The privilege protects information contained in an article even if it is ultimately proven false or inaccurate.

Oweida, 599 A.2d at 233. The privilege does not require a verbatim recitation of the document reported but applies also to a summary of substantial accuracy. *Moseley v. Observer Publishing Co.*, 629 A.2d 965, 967 (Pa. Super. 1993). To determine if the privilege has been abused, a court must ascertain if a reasonable person would conclude that an article was a fair and accurate rendition of the complaint. *Id.* at 503. Furthermore, no reasonable jury can conclude that the sole purpose of the article was to cause harm to a plaintiff merely because the article reports the complaint with "spiced up language to attract readers' attention." *First Lehigh Bank*, 700 A.2d at 508.

LCL claims that their actions were privileged because their article was fair and accurate when compared to Tucker's complaint. (LCL's Brief at 24). LCL's article reported that Tucker's suit was initiated because of the humiliation and suffering caused by Shakur's lyrics. *Id.* In addition, the article stated that Tucker's husband suffered a loss of advice, companionship and consortium as a result of Shakur's lyrics. *Id.* LCL asserts that these statements closely reflect Tucker's complaint because "loss of consortium" specifically includes a loss of sexual relations with one's spouse. *Id.*

While LCL did lead its story with the "spiced up" statement "Tucker's diminished sex life," the article, on the whole, accurately reflected Tucker's Complaint. Also, proving abuse of the privilege requires proof that the sole purpose of the article was to humiliate the plaintiff. Here, the articles report the more interesting aspects of a legal battle between two noteworthy public figures. Therefore, LCL is privileged to publish its article and the Preliminary Objections were properly sustained.

Conclusion

While the defendants, especially PNI, clearly embarrassed and annoyed Tucker, she has not demonstrated that the articles were in any way defamatory. The only harm asserted by the plaintiff is that people ask her about the *Shakur* lawsuit and that she is embarrassed. She did not present evidence that her reputation has been damaged or that third parties are deterred from associating with her nor did she demonstrate actual malice on the part of the defendants. The Defendants' Preliminary Motions in the nature of a demurrer are correctly sustained because Tucker failed to set forth a cause of action which would entitled her to the relief sought.

BY THE COURT
/s/ Flora Barth Wolf
WOLF, J.

IN THE COURT OF COMMON PLEAS
FOR THE COUNTY OF PHILADELPHIA
CIVIL TRIAL DIVISION
C. DELORES TUCKER AND WILLIAM TUCKER
VS.
LEGAL COMMUNICATIONS, LTD.
JULY TERM, 1998 NO. 3644

ORDER

AND NOW, this 16th day of June, 1999, upon consideration of the Preliminary Objections of the defendant, Legal Communications, Ltd., the response thereto and legal memoranda in support of each, it is hereby ORDERED and DECREED, that the Preliminary Objections are sustained and the plaintiffs' Complaint is dismissed.

BY THE COURT:
/s/ Flora Barth Wolf
WOLF, J.

IN THE COURT OF COMMON PLEAS
FOR THE COUNTY OF PHILADELPHIA
CIVIL TRIAL DIVISION
C. DELORES TUCKER AND WILLIAM TUCKER
VS.
PHILADELPHIA NEWSPAPERS, INC.
JULY TERM, 1998 NO. 3644

ORDER

AND NOW, this 16th day of June, 1999, upon consideration of the Preliminary Objections of the defendant, Philadelphia Newspapers, Inc., the response thereto and legal memoranda in support of each, it is hereby ORDERED and DECREED, that the Preliminary Objections are sustained and the plaintiff's Complaint is dismissed.

BY THE COURT:
/s/ Flora Barth Wolf
WOLF, J.

PRESENTED FOR REVIEW
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IN THE COURT OF COMMON PLEAS
PHILADELPHIA COUNTY, PA

CIVIL ACTION—LAW
JULY TERM, 1998 NO. 003644

JUDGE FLORA BARTH WOLF

JURY TRIAL DEMANDED

C. DELORES TUCKER and WILLIAM TUCKER,
her husband

Plaintiffs

v.

PHILADELPHIA DAILY NEWS; PHILADELPHIA NEWSPAPERS, INC., KNIGHT-RIDDER, INC.; SPORTS & ENTERTAINMENT LITIGATION REPORTER; ANDREWS PUBLICATIONS, INC.; LEGAL COMMUNICATIONS, LTD.; THE LEGAL

INTELLIGENCER; MERIDIAN VENTURE PARTNERS LP; BASELINE II, INC.; and THE ENTERTAINMENT LITIGATION REPORTER

Defendants

AMENDED COMPLAINT

1. Plaintiff C. DeLores Tucker is the former Secretary of State of the Commonwealth of Pennsylvania; the convening founder and Chair of the National Political Congress of Black Women, Inc.; President of the Bethune DuBois Fund, Inc., which she founded in 1991; former Chair of the Democratic National Committee Black Caucus; founding President of the Martin Luther King, Jr. Association for Non-Violent Change; and the first African-American to serve as President of the National Federation of Democratic Women. Mrs. Tucker was selected by *People* Magazine as one of "25 of the World's Most Intriguing People." She was also featured in the inaugural issue of John F. Kennedy, Jr.'s *George* Magazine for her crusade against gangsta/porno rap. She was also selected as "People Magazine 1996 Yearbook Honoree." Mrs. Tucker is a member of the NAACP SCF Board of Trustees, and serves on the Board of Trustees of Lincoln University in Pennsylvania, the Delaware Valley College, and the Commonwealth Medical College of Pennsylvania. Mrs. Tucker has received more than 300 awards and honors, including the Philadelphia Urban League Whitney Young Award (1990), NAACP Thurgood Marshall Award (1982), The NAACP Freedom Fund Award and EBONY Magazine's "100 Most Influential Black Americans" (1972-77), Ladies Home Journal Nominee for Woman of the Year (1975, 1976), the B'nai B'rith Community Service Award, and the Martin Luther King, Jr. Distinguished Service Award from Mrs. Coretta Scott King, founder of the Martin Luther King, Jr. Center for Nonviolence in Atlanta, Georgia.

2. Over her lifetime, C. DeLores Tucker has frequently been called upon to speak at churches throughout the country. She is the moral and religious daughter of a well-known, respected Philadelphia minister, now deceased, and, over her lifetime, Mrs. Tucker and her husband William have attempted in everything they do to be and appear God fearing, religious, moral, ethical, altruistic, generous, private in their personal lives, sensible, modest, non-avaricious, etc. They have always kept their marital relationship private and precious.

3. The Tuckers are over 70 years of age, have been married for more than 50 years, and reside in Philadelphia, Pennsylvania.

4. Philadelphia Daily News, Philadelphia Newspapers, Inc., and Knight-Ridder. Inc. are related Pennsylvania entities that published an article on August 2, 1997, misrepresenting Plaintiff C. DeLores Tucker's July 21, 1997, lawsuit as "Suit vs. Shakur estate says 'vile' lyrics ruined her rep—and her sex life." Exhibit A

5. Legal Communications, Ltd. and The Legal Intelligencer are related Pennsylvania business entities that, on August 4, 1997, published an article entitled "Gangsta Rap Critic Sues Shakur Estate For Album's Derogatory References." Exhibit B

6. For a three-year period prior to July, 1997, Plaintiff C. DeLores Tucker was the leader of a large group of religious, moral, and law-abiding citizens who marched, lobbied, and campaigned against the pornographic and drug-oriented misogynistic lyrics of "gangsta" rap as created, promoted, distributed, and marketed by various corporations to minors without restriction.

7. "Gangsta rap" is a slang expression using vernacular for the word "gangster" which, by definition, refers to one

engaged in anti-social or criminal behavior. Furthermore, the music contains vile, profane, obscene and indecent lyrics which glorify drugs, violence, and illicit sex. "Rap" or "Hip Hop" is a form of music, more spoken than sung, and can be distinguished from "gangsta rap" in that it chronicles life in the ghetto without obscene and indecent lyrics, and has redeeming social value.

8. Various corporations, including Death Row Records, Interscope Records, Time Warner, and Seagram Co., directly or indirectly through subsidiary corporations, produced and marketed gangsta rap music that takes pride in sex, drugs, and gangster violent behavior.

9. Over the four-year period of 1993-1997, Mrs. Tucker focused her attention on stopping the production and distribution of gangsta rap music to impressionable youth because it tends to corrupt the morals of minors in violation of 18 Pa.C.S.A. §6301(a), that some of it is obscene and unprotected by the Constitution and some is "explicitly sexual material" in violation of 18 Pa.C.S.A. §5903(c).

10. Said efforts met with widespread support across political, racial and economic lines, including support from William Bennett, former U.S. Secretary of Education, U.S. Senator Joseph Lieberman, Majority Leader and Vice Presidential candidate Robert Dole, General Colin Powell, and many of our country's religious leaders.

11. In February, 1996, Interscope Records distributed under its label, "All Eyez On Me", which is a record containing music performed by deceased recording gangsta rap superstar Tupac Shakur and produced by Death Row Records.

12. Contained on the aforementioned recording entitled "All Eyez on Me" are recordings entitled "Wonda Why they Call B" and "How Do You Want It."

13. Contained in the aforementioned recording entitled "How Do You Want It" were lyrics stating

Deloris Tucker you's a muthafucker
instead of tryin' to help a nigga
you destroy a brotha
worst than tha others
Bill Clinton
Mr. Bob Dole
You too old to understand tha way tha game is told
your lame
so I gotta hit you with tha high facts
won't someone listen ?
makin' millions niggas top that
they wanna censor me
they ratha see me in a cell
livin' in hell
with only a few of us to live to tell
now everybody talken about us
I could give a fuck
I'd be tha first one to bomb and cuss
Nigga tell me how you want it ....
[KC and JoJo] 2X
How do you want it
How do you feel
Comin' up as a nigga in tha cash game
I'm livin' in the fast lane
I'm for real

14. On March 1, 1996 the Philadelphia Daily News published a "Profile" article regarding an interview with Plaintiff C. DeLores Tucker regarding Tupac Shakur's recording "All Eyez on Me." Exhibit C.

15. The Profile article quoted Plaintiff C. DeLores Tucker as stating that she would look into filing a lawsuit to stop production of "gangsta rap" music.

16. On July 21, 1997, Mrs. Tucker and her husband, William Tucker, brought a lawsuit against the Estate of Tupac Shakur and other entities involved in publishing and marketing the label "All Eyez On Me." Exhibit D

17. On July 31, 1997, C. DeLores Tucker issued a Press Release concerning that lawsuit which was transmitted to many in the news media including AP, UPI, and Knight Ridder, a Defendant in the instant case. **Exhibit E**

18. Libel, as defined by the United States Supreme Court in Masson v. New Yorker Magazine, Inc., 501 U.S. 496 (1991) is:

> Under California law, "[l]ibel is a false and unprivileged publication by writing ... which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation." ... It matters not under California law that petitioner alleges only part of the work at issue to be false. "[T]he test of libel is not quantitative; a single sentence may be the basis for an action in libel, even though buried in a much longer test," though the California courts recognize that "[w]hile a drop of poison may be lethal, weaker poisons are sometimes diluted to the point of impotency."

Masson, 501 U.S. at 509-510 (citations omitted).

19. Plaintiffs' July 21, 1997, Complaint has 66 paragraphs, is 13 pages in length, includes 12 Defendants, and asserts three counts or causes of action.

20. Mrs. Tucker, who spent her lifetime helping her brothers and who was respected and admired in the African-American community, was accused of being a traitor to her people and was trying to get rich from her anti-gangsta rap crusade and referred to as a m__ f__, someone who should be hated and despised and in the gangsta community marked for elimination. See, Press Release, **Exhibit E.**

21. The accusations that Mrs. Tucker was a traitor to her people, was trying to get rich from her anti-gangsta rap crusade, and a m__ f__ (someone to be hated, despised, and marked for elimination) were untrue, and Tupac Shakur and the other Defendants knew that the facts contained in Tupac Shakur's recording were untrue.

22. Mrs. Tucker's lawsuit attacked the "gangstas" in the suites, the corporate Defendants, and referenced Tupac Shakur as a lesser figure. See, Press Release, **Exhibit E.**

23. Plaintiffs' July 21, 1997, Complaint avers that 11 Defendants, in addition to the Estate of Tupac Shakur, are liable to them and asserts the bases whereby the other 11 Defendants are liable. See, 66 paragraph 13-page Complaint **(Exhibit D).** Also see, Press Release, **Exhibit E.**

24. The lewd lyrics reference was a small part of the context of the 66-paragraph Complaint and portrayed Mrs. Tucker as a MF, a person who should be hated, held in contempt, ridiculed, shunned, or avoided. The lyrics, in combination with the other accusations in the Complaint, injured her in her occupation.

25. The July 21, 1997, Complaint states specifically as to damages claimed by Mrs. Tucker:

> 41. Following the lawsuits and the release of the aforementioned recordings, Plaintiff, C. Delores Tucker has reasonable fear for her life because violence and death play a central role in the gangsta rap arena. Indeed, two prominent murders have been reported since the unsolved murder of Tupac Shakur in September, 1996.
>
> 42. Since the lawsuits and the release of the aforementioned recordings Plaintiff, C. Delores Tucker has received death threats.

43. The lawsuits and the release of the aforementioned recordings were intended to and did cause Plaintiff C. Delores Tucker severe emotional distress.

44. By using vile and offensive language, the recordings have held her up as an object of scorn to more than 5,000,000 people, including children in Philadelphia and elsewhere.

45. Since the lawsuits and the release of the aforementioned recordings C. Plaintiff C. Delores Tucker has suffered defamation of character and reputation.

46. Plaintiff, who is frequently called upon to speak at churches throughout the country, is a moral and religious daughter of a well-known, respected Philadelphia minister, now deceased, and has siblings, extensive family, relatives, and thousands of friends in Philadelphia and throughout the country and world, who have heard or heard about the said recording and lawsuit.

47. As a result, Plaintiff C. Delores Tucker, has incurred medical expense; has undergone mental pain, suffering, ar l inconvenience; loss of life's pleasures; fears for her life; has lost her personal freedom to travel freely where and when she desires; and claim is made therefor.

48. As a result of the aforesaid injuries, Plaintiff C. Delores Tucker will incur medical expense; will undergo mental pain, suffering, and great inconvenience; loss of life's pleasures; fear for her life; lose her personal freedom to travel freely where and when she desires; and claim is made therefor.

49. As a result, Plaintiff C. Delores Tucker has been, and in the future will be, subject to great humiliation and embarrassment, and claim is made therefor.

(Emphasis supplied in paragraphs 41-49.)

26. Plaintiffs' July 21, 1997, Complaint avers that 11 Defendants, in addition to the Tupac Shakur Estate caused Mrs. Tucker's various types of damages including: "fear for her life;" "severe emotional distress:" "defamation of character and reputation;" "medical expense," "mental pain, suffering, and inconvenience;" "loss of life's pleasures;" "lost her personal freedom to travel where and when she desires;" future "medical expense;" future "mental pain and suffering and great inconvenience;" future "loss of life's pleasures;" future "fear for her life;" future "[loss of] her personal freedom to travel freely where and when she desires;" and past and future "humiliation and embarrassment." See, Paragraphs 41-49 of Plaintiffs' July 21, 1997, Complaint (**Exhibit D**). Also see, Press Release, **Exhibit E.**

27. Nowhere in Paragraphs 41-49 is there any mention that Plaintiff C. DeLores Tucker's sex life has been affected in any way or that there is any claim by her that lewd lyrics affected her sex life.

28. Nowhere in Paragraphs 1-49 or in the July 31, 1997, Press Release do the words "sex" or "sex life" appear.

29. Paragraph 50 of Plaintiffs' Complaint is a stock, boilerplate, consortium loss allegation.

> 50. Plaintiff's husband, William Tucker has as a result of his wife's injuries, suffered a loss of advice, companionship and consortium. [Emphasis supplied.]

30. Consortium loss claims are standard boilerplate allegations in virtually all civil litigation cases where one spouse is claiming that she or he has been damaged because of the injuries to the other spouse.

31. Consortium loss claims can but rarely, involve claims that the plaintiff's sexual life has been affected, and almost never can be construed to mean, without some factual allegations, that the husband's and wife's sexual life has been

destroyed or that, as a result of an accident or incident, the parties have not been able to have sex.

32. Paragraphs 50-66 do not aver any facts whatsoever that could be construed to mean that lewd lyrics have in any way affected Mr. and Mrs. Tucker's sex life or that there were any allegations whatsoever or claims of damages along these lines.

33. Mrs. Tucker's Complaint attacks the corporate and business Defendants for bankrolling and getting rich from gangsta rap generally, and "All Eyez On Me" particularly. See, Press Release, Exhibit E.

34. Mrs. Tucker's Complaint attacks the words in "All Eyez On Me" which accused her of being a traitor to her people, of being a m——f——, and of trying to get rich from her anti-gangsta rap crusade.

35. The Defendants in the instant case distorted and misrepresented Mrs. Tucker's Complaint as being one where she brought a $10 million lawsuit only against the Shakur Estate and was seeking $10 million only because lewd lyrics destroyed her sex life.

36. Elementary logic does not permit one to reasonably conclude that the word "consortium" means "sex" because some consortium claims may involve sex or some definitions in some dictionaries may include sex as one of several potential elements of a consortium claim. If that were permissible logic, one could conclude that the use of "inclement" weather could lead one to assert an ice storm in July or Socrates is a woman because he was a human being and human beings include men and women.

37. The United States Supreme Court in Masson v. New Yorker Magazine, 501 U.S. 496 (1991) and in Milkovich v. Lorain Journal Co., 497 U.S. 1 (1990) made clear to the press and their legal departments that the press does not have "rational interpretation" and "opinion" defenses, and they must accu-

rately quote individuals where and when inaccurate quotations potentially can cause harm to an individual's reputation.

38. The articles published in the Philadelphia Daily News and The Legal Intelligencer quoted Richard Fischbein, co-administrator of the estate of Tupac Shakur as saying, "It's hard for me to conceive how these lyrics could destroy her sex life" Exhibit A and B.

39. Defendants misrepresented and/or falsely represented that the July 21, 1997, Complaint is a lawsuit wherein Plaintiffs averred that Tupac Shakur's lewd lyrics had affected or destroyed Mrs. Tuckers' sex life. See, Exhibits A and B.

40. Defendants' reports that C. DeLores Tucker filed a lawsuit claiming that lyrics diminished and/or ruined her sex life were made with knowledge of the falsity of the report or reckless disregard for the falsity.

41. Defendants never obtained a copy of the July 21, 1997 Complaint; or, if they obtained it, did not read it; or, if they read it, did not fairly, accurately, or honestly represent the averments in the Complaint.

42. Defendants ignored the two-page Press Release as to the parties, bases, content, purpose, claims, and damages being pursued by the July 21, 1997, Complaint.

43. Defendants characterized or mischaracterized the Plaintiffs' July 21, 1997, Complaint so as to sensationalize the sexual "spin" of Richard Fischbein.

44. Defendants knew or should have known that the best evidence of what was in a Complaint and what a Complaint said was the Complaint itself, and Defendants who did not obtain a copy of the Complaint or read the Complaint were reckless in reporting that Mrs. Tucker was bringing a lawsuit against the Tupac Shakur Estate alleging that lewd lyrics on two songs destroyed or affected her sex life.

45. Defendants are aware that press releases are sometimes issued to explain matters of public information and

importance and, in this case, a Press Release was issued but was ignored by the Defendants.

46. After the Complaint itself and a Press Release, the next best source of information as to what was in the Complaint and what was being averred in the Complaint would be the author of the Complaint, who would be the attorney who drafted the Complaint.

47. One publication, Billboard Bulletin, and one writer, Carolyn Horwitz, read the Complaint, spoke with Plaintiffs' counsel and properly reported on the subject Complaint. That author and publication are not subjects of this lawsuit. "Rap Critic Tucker Sees Slander in Shakur Lyrics." Exhibit F

48. A second publication, The Washington Post, although quoting the Shakur Estate's administrator and lawyer, Fischbein, who sensationalized the Complaint with his distorted "spin," otherwise fairly and accurately reported on the July 21, 1997, Complaint and, therefore is not included as a Defendant. "Not in the Mood Music." Exhibit G. Also see articles of other publishers not included as Defendants: Hyde Park Citizen, "Dr. C. Delores Tucker files Multi-million suit against record producers of Gangsta Rap 'Filth.'" Exhibit H; New York Voice Inc./Harlem USA, Exhibit I; Chicago Independent Bulletin, Exhibit J; The New York Beacon, Exhibit K; Jet, Johnson Publishing Company, Inc., "C. DeLores Tucker files $10 million lawsuit against Tupac Shakur's estate." Exhibit L; The Philadelphia Tribune, "Tucker: Media distorts lawsuit." Exhibit M; The Philadelphia Tribune, "C. DeLores Tucker faces uphill battle." Exhibit N; and Philadelphia Weekly, "Media Has C. DeLores Tuckered." Exhibit O.

49. The reporter for the Philadelphia Daily News talked to Plaintiffs' counsel, Richard C. Angino, who answered his questions and explained the basis of the Tuckers' Complaint, which did not involve the Tuckers' sex life.

50. Selective responses from the reporter's conversation with Richard C. Angino were quoted by the Philadelphia Daily News reporter, but the quotations were interspersed with categorical statements not substantiated by Richard Angino that Mrs. Tucker was suing the Tupac Shakur Estate because vile lyrics destroyed her sex life.

51. The Philadelphia Daily News headline was "Suit vs. Shakur estate says 'vile' lyrics ruined her rep—and her sex life" (emphasis supplied), which is contrary to the discussion that the Philadelphia reporter had with Richard C. Angino.

52. In the paragraph preceding the quote from Richard C. Angino, the Philadelphia Daily News reporter stated "C. DeLores Tucker has filed a $10 million lawsuit against Tupac Shakur's estate, saying some of the late rapper's lyrics caused her mental anguish and diminished her sex life" (emphasis supplied), again contrary to the reporter's and Angino's discussion.

53. Defendants also directly referenced Richard Fischbein who was the attorney-administrator of the Tupac Shakur Estate, who stated: "It is hard for me to conceive these lyrics could destroy her sex life."

54. The Philadelphia Daily News juxtaposed the quote from Angino and Fischbein and made assertions that Mrs. Tucker was alleging that vile lyrics ruined her sex life.

55. Defendants went far beyond merely quoting the Tupac Shakur Estate's administrator-lawyer Fischbein, but actually asserted as a fact that the Tuckers were claiming lewd lyrics destroyed or seriously damaged the Plaintiffs' sex life, which entitled them to $10 million, stating or implying that the lawsuit was frivolous, all of which journalistic actions violated the Society of Professional Journalists' Code of Ethics and defamation laws.

56. Defendants made it appear that Mrs. Tucker, at her elderly age, was seeking $10 million because lewd lyrics destroyed her sex life.

57. Defendants knew, and particularly the Philadelphia Daily News people from talking to Richard C. Angino and Mr. Fischbein and quoting Mr. Fischbein that he could not understand how the lewd lyrics would affect Mrs. Tucker's sex life, should have known, and/or were reckless in not knowing that the Tuckers' July 21, 1997, lawsuit and the Tuckers did not claim they were entitled to $10 million because lewd lyrics destroyed their sex lives.

58. The Legal Intelligencer, being a legal publication, knows the basics of fact pleading in a complaint and knows that a consortium for a husband cannot be the foundation to assert that a wife was making a claim that lewd lyrics destroyed her sex life, particularly when there was no such claim in the complaint.

59. Plaintiffs' July 21 1997, Complaint avers that Mrs. Tucker is a moral and religious daughter of a well-known, respected Philadelphia minister, now deceased; the leader of a large group of religious, moral, and law-abiding citizens; and any research into her background would lead any responsible journalist to suspect any claim that Mrs. Tucker and her husband were bringing a lawsuit on the sole basis that lewd lyrics destroyed their sex lives.

60. Failing to do research into Mr. and Mrs. Tucker's background, including their ages, years of marriage, religious and moral upbringing, emphasis upon privacy, etc., is totally irresponsible, and publishing an article without such research constitutes a reckless disregard for truth, accuracy, and fair reporting.

61. Defendants have slandered and defamed Plaintiffs by making the Tuckers objects of ridicule in the world and fractured their standing in the community of respectable society, and the Defendants have done so with knowledge or reckless disregard of the truth or falsity of the articles.

62. Defendants have put Plaintiffs in a false light by portraying the Tuckers as individuals bringing a frivolous law-

suit, contending that lewd lyrics destroyed their sex lives, and consequently they are entitled to $10 million.

63. Defendants' slanderous stories have snowballed and mushroomed to the point of hundreds of articles ridiculing and demeaning Plaintiffs throughout the world.

64. Plaintiffs cannot go anywhere or do anything without friends, relatives, acquaintances, and even strangers questioning the Tuckers as to why they brought such a ridiculous lawsuit.

65. Plaintiffs claim damages which include present and future medical expenses; present and future mental pain, suffering, and inconvenience; present and future loss of life's pleasures; present and future humiliation, present and future embarrassment, etc.

66. Plaintiffs claim substantial punitive damages against Defendants commensurate with their conduct and the financial worth of their companies.

WHEREFORE, Plaintiffs C. DeLores Tucker and William Tucker demand judgment against each and every Defendant in an amount in excess of One Million ($1,000,000) Dollars, exclusive of interest and costs, and in excess of any jurisdictional amount requiring compulsory arbitration.

Respectfully submitted,

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NEWS
THE PEOPLE PAPER

PHILS STREAKIN
Whip McG[illegible]re[illegible]rds
for 4th straight win
Sports

C. DeLores Tucker claims CD gave her ...

A DIRTY RAP





Suit vs. Shakur estate says 'vile' lyrics ruined her rep – and her sex life

Page 5

Would-be N.Y. subway bombers linked to Hamas - Page 3

EXHIBIT

TUCKER

Continued from Page 5

"This is the woman who marched with Martin Luther King to fight for integration, and now she is fighting a new battle against gangsta rap."

Since the record's release, her lawyer said Tucker has received death threats and now fears for her life. She also has incurred medical expenses, suffered a loss of life's pleasures and has lost the freedom to travel freely.

"Tucker has reasonable fear for her life because violence and death play a central role in the gangsta rap arena," the lawsuit states.

Calls were placed to Interscope Records, Death Row Records, and Time Warner, but no one was available for comment. ■

The Associated Press contributed to this report.

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The Legal Intelligencer
August 4, 1997 Monday
SECTION: REGIONAL; Roundup; Pg. 6
LENGTH: 875 words
BODY:

Gangsta Rap Critic Sues Shakur Estate For Album's Derogatory References

Los Angeles—A woman who built a national reputation for criticizing the violent lyrics of gangsta rap has sued the estate of Tupac Shakur, saying one of his albums made derogatory references to her.

C. DeLores Tucker filed the suit last week in Philadelphia federal court, claiming, among other things, that the anguish caused by the lyrics diminished her sex life with her husband.

Shakur's "All Eyez on Me"—a 1996 double CD that sold nearly five million copies—caused Mrs. Tucker "great humiliation, mental pain and suffering," according to the lawsuit.

It also says the injuries caused her husband, William, to "suffer a loss of advice, companionship and consortium."

Mrs. Tucker, who is asking for $ 10 million in the suit, could not be reached for comment Thursday.

Richard Fischbein, a New York attorney who is co-administrator of the estate, said he is baffled by the suit.

"It's hard for me to conceive how these lyrics could destroy her sex life," Fischbein said. "But we can only wait for the proof to be revealed in court."

Tucker and her husband, William, took particular offense at the "lewd" and "indecent" references in two songs

titled, "Wonda Why They Call U B——" and "How Do U Want It," the suit says.

In one song, which the suit claims alludes to prostitution, the lyrics state: "Got your legs up trying to get rich. Keep your head up and your legs closed, dear Ms. C. DeLores Tucker."

The suit also names Shakur's widow, Afeni, Death Row Records, Interscope Records, Time Warner, Seagram Co., Tower Records and seven other people and entities as defendants.

Tucker, head of the Washington-based National Political Congress of Black Women, formed an anti-rap campaign in 1994 with former U.S. drug czar William Bennett.

Shakur was shot as he rode in a car near the Las Vegas Strip Sept. 7. He died six days later at a local hospital.

—Associated Press

Jail Time for Defendant Who Ignored Order to Stay Away From Family

Philadelphia—After finding that a stalking defendant ignored an order to stay away from the family that accused him, a Municipal Court judge sent the accused man to jail for a week.

"These people have a right to live in peace," Judge Lydia Kirkland told Robert Jacobs on Thursday, holding him in contempt of court. "I'm speaking both as a parent and as a judge. These kids have only one childhood, one summer a year. They don't need this stuff."

Jacobs, 48, is to go on trial next Thursday on charges of stalking, harassing and making terroristic threats against Andrew Strunk, 49; his wife, Stephanie Blatt, 32; and their two sons, ages 11 and 3 1/2.

On June 3, Kirkland issued an order directing Jacobs to keep his distance from the family, which had filed a private

criminal complaint against him. The district attorney's office is prosecuting the case.

Since 1994, according to the complaint, Jacobs has shadowed the couple's older son at the Fairmount Recreation Center, following him into bathrooms, showing up at his Little League games, and constantly trying to talk to him.

Assistant District Attorney Charles Ehrlich said Thursday that Jacobs had continued to harass the family.

"He physically planted himself in front of her [Ms. Blatt] at a swimming pool, and later followed her and her son to a Fresh Fields supermarket and harassed them there," Ehrlich told the judge. "He kept showing up at places where he knew they were."

Jacobs, who lives about three blocks from the family, denied the allegations and said Ms. Blatt was harassing him. His attorney, Joseph Levin, said jailing Jacobs would violate his constitutional rights.

"I didn't do those things," Jacobs told Kirkland. "The pool and the Fresh Fields are public places. I have a right to be there."

The judge was not swayed.

"I find it utterly appalling you can stand there and argue that it's the other party who violated the court order," she told Jacobs. "I find it offensive. Maybe a week in jail will get you to start thinking about your actions."

—Associated Press

Employees with Disabilities Sue Airline

Pittsburgh—Eight employees who have disabilities sued US Airways, claiming the company discriminated against them in part by allowing signs marking their work area as "USAir's crip shop."

USAir is the former corporate name of US Airways.

Suit: Tupac dead wrong

Rights leader says rapper's strong words ruined her life

by **Jamal E. Watson** and **Jim Smith**

Daily News Staff Writers

C. DeLores Tucker has filed a $10 million lawsuit against Tupac Shakur's estate, saying some of the late rapper's lyrics caused her mental anguish and diminished her sex life.

Tucker filed the lawsuit this week in Philadelphia federal court, charging that Shakur's record-breaking 1996 CD "All Eyez on Me" caused her "great humiliation, mental pain and suffering."

"She was really called a lot of bad names," said Tucker's Harrisburg attorney, Richard C. Angino. "It was all done to intimidate her."

It also says the injuries caused her husband, William, to "suffer a loss of advice, companionship and consortium."

Richard Fischbein, a New York attorney who is co-administrator of Shakur's estate, said he is baffled by the suit.

"It's hard for me to conceive how these lyrics could destroy her sex life," Fischbein said. "But we can only wait for the proof to be revealed in court."

Tucker and her husband took particular offense at the "lewd" and "indecent" references in two songs titled, "Wonda Why They Call U B—" and "How Do U Want It," the suit says.

In one song, which the suit claims alludes to prostitution, the lyrics state: "Got your legs up trying to get rich. Keep your head up and your legs closed, dear Ms. C. DeLores Tucker."

"Tupac was just one of the instruments that participated in slandering Dr. Tucker," Angino said.

He said such companies as Death Row Records, Interscope Records, Time Warner, Seagram and Tower Records — all named as defendants in the suit — are also responsible.

"These companies make billions of dollars putting out music that destroy African-Americans," Angino said.

In filing the lawsuit, Tucker said that over the years she has tried to stop the production and distribution of gangsta rap to "impressionable youth, because it tends to corrupt the morals of minors."

She contends it "contains vile, profane, obscene and indecent lyrics which glorify drugs, violence and illicit sex."

Tucker, head of the Washington-based National Political Congress of Black Women, formed an anti-rap campaign that gained widespread support from such notables as former U.S Education Secretary William Bennett; U.S. Sen. Joseph Lieberman, D-Conn.; former Republican presidential nominee Bob Dole and retired Gen. Colin Powell.

In January 1996, she began an organized protest of Tower Records in Philadelphia because the store was selling Shakur's "All Eyez on Me" to minors.

Kathleine Dlange, administrative assistant for the South Street Tower Records store, remembered when Tucker and her entourage protested outside the record store, forcing it to close briefly.

"They were reading the obscene lyrics off of the CD through a bullhorn outside of the store," Dlange recalled. "Then, they came into the store and started to throw the CDs on the ground."

The police were called and Tucker was arrested.

"I think she blew the situation out of proportion," Dlange said.

Tucker, a former secretary of state for Pennsylvania, has been harshly condemned by some black intellectuals for aligning herself with right-wing political leaders to fight gangsta rap.

Tucker's lawyer defended her tactics, saying "Here is a woman who has spent her lifetime caring about her people, and now these record companies are trying to make her life miserable.

See TUCKER Page 23

Fighting Words

Here are lyrics from two of the Tupac Shakur songs to which C. DeLores Tucker objected, starting with "Wonda Why They Call U B—":

"Dear Ms. Delores Tucker
keep stressin' me
f— with a muthaf— mind
I figured you wanted to know you know
why we call them hos b—
and maybe this might help you understand
it ain't personal
strictly business, baby
strictly business.
So if you wonder why we call U b—.
You wonder why we call U b—."

And from the song "How Do U Want It":

Delores Tucker
you's a muthaf—
instead of tryin' to help a n— you destroy a brotha
worst than tha others
Bill Clinton
Mr. Bob Dole
You too old to understand tha way tha game is told
you're lame
so I gotta hit you with tha high facts
won't someone listen?
makin' millions
n—, top that
they wanna censor me
they gotta see me in a cell livin' in hell
with only a few of us to live to tell
now everybody talken about us
I could give a f—
I'd be tha first one to bomb and cuss
N—, tell me how you want it."

The eight employees asked that the lawsuit, filed Thursday, be declared a class-action, claiming that US Airways has a policy of segregating workers with mental and physical disabilities from other workers.

The eight claim they were forced to work easy jobs such as separating nuts from bolts in an area called the "rubber room" by management.

The employees also say that because of their disabilities, they were not allowed to work overtime.

The lawsuit claimed US Airways allowed other employees to harass them by posting signs near the disabled employees' work room. The signs compared the disabled employees to animals in a zoo and labeled their workroom, "USAir's crip shop."

US Airways spokesman David Castelveter said the company had not seen the lawsuit but was committed to complying with the law.

—Associated Press

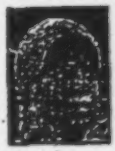
LANGUAGE: ENGLISH

LOAD-DATE: August 4, 1997

THE PHILADELPHIA DAILY NEWS FRIDAY, MARCH 1, 1996

Profile

C. DeLores Tucker will lead an anti-gangsta rap protest at 1 p.m. tomorrow at Tower Records on South Street. At our request, she took time out to review some lyrics from Tupac Shakur's new double-disc CD, "All Eyez on Me."



Tucker



Shakur

Shakur: From "Wonda Why They Call U" — "Keep your head up and your legs closed Dear Ms. DeLores Tucker." Then follows a section in which Shakur tells why women are called b—s and he adds, "It ain't personal, it's business."

Tucker: "It saddens me to see someone like this violate a pledge that a million men took in Washington and more than that around the country to never use that word b— again. It's very offensive to African-American women. And it's offensive to be teaching young people to call their sisters and mothers and grandmothers b—s."

Shakur: From "How Do You Want It" — "C. DeLores Tucker, you're a m—f—, instead of trying to help a brother you destroy a n—a."

Tucker: "This just ties my determination that I'll do whatever I have to do legally to stop this music. I know the Fraternal Order of Police has filed a suit against these people. I haven't looked into that, but if there's a chance I will."

Shakur: From "No More Pain" — "Tricks, ho's, I shot the one, b—."

Tucker: "It has no artistic merit at all. It corrupts the spirit and ultimately destroys a community. It's interesting that only black kids get big contracts to carry that filthy demeaning language to their people." ■

BEST AVAILABLE COPY

31 July 1997

Dr. C. Delores Tucker Files $Multi-Million Suit
Against Record Producers of Gangsta Rap 'Filth'

Suit Targets Death Row, Interscope Records, Ted Field,
Time Warner, Others For Personally Defaming Her!

For Immediate Release

For Further Information, call
Chester A. Higgins, Sr 202/387-4852

Washington, DC--
C Delores Tucker whose organization, the National Political Congress of Black Women, Inc. (NPCBW) has waged an on-going battle against the recording industry and its use of misogynous, sexist, racist and pornographic lyrics targeting the nation's children in gangsta rap music, has filed a multi-million dollar suit directed at the heart of the gangsta rap music in the US.

The suit was filed in the US District Court for the Eastern District, Philadelphia, Pa., by Angino & Robner, a prominent law firm in Pennsylvania. Dr. Tucker's husband, William, a well known businessman, joins her as a plaintiff in the suit.

It names Tower Records, of Philadelphia, Interscope and Death Row Records, Inc., of Los Angeles California, Ted Field, an official of Interscope, the giant entertainment corporation Time Warner, the estate of the late Tupac Shakur and others, in a sweeping defamation of character litigation.

In a statement, Dr. Tucker, the NPCBW founder/chair, pointed out that "Shakur's Death Row Records, his next to last album, "All Eyez On Me,"specifically defamed me in a most degrading way. It called me a personal obscenity... for fighting against this music. And I feel that those who produce, and promote this recording all over the world are equally guilty of defamation. If I should win this suit, I will use the money to help create a healthy and vigorous climate in which our rap, hip hop and other artists can flourish and grow in healthy, productive ways and not be enslaved to the greed-driven, race driven, porno driven, grossly sexist lyrical filth that particularly defames Black women, promotes drug use, violence and panderes pornography to our children."

" I am not opposed to hip hop or rap music that merely chronicles the pain, crime and degradation of some of African America's most devastated communities. Indeed, most rap and hip hop artists are highly talented and produce some of the world's most distinctive music.. But I am against the executives and publicists who administer "gangsta rap", produce and circulate it all over the world, using vile, demeaning lyrics, encouraging and abetting some of their more aggressive artists in personally defaming their critics."

EXH E

"It is the gangstas in the suites, not those in the streets that I am after. They hide behind the First Amendment while abdicating their personal and corporate responsibility."

Acknowledging for the first time that she has received death threats during her long crusade against gangsta rap lyrics, and that some industry operatives have been prying into her private affairs "seeking dirt to demean me," she declared: "I am not unmindful of the risks to my life that I take in filing this action. However, I am even more concerned about the many, many young lives that have already been lost needlessly and the little children who will be lost if I do not say, as I am saying to this industry--"STOP NOW!"

In August, 1995, Interscope Records filed suit against Dr. Tucker in California charging her with inducement to "breach the contract between Death Row and Interscope Records." She vigorously denied the charge and asserted Interscope brought the charges in an attempt "shut me up and force me to discontinue" NPCBW's crusade against the industry's offensive gangsta rap lyrics.

She said since the suit was filed, she has been subjected to hours of depositions, suffered, surveillance and intimidation, emotional stress, received death threats, causing her "reasonable fear" for her life because violence and death play a central role in the gangsta rap arena, noting that two prominent murders have been reported since the unsolved murder in September 1996 of Tupac Shakur, all of which adversely affects her ability to travel freely without fear.

Dr. Tucker is former Secretary of State of the Commonwealth of Pennsylvania, a first at that time for a woman and a Black, and a former chair of the Democratic National Committee Black Caucus. She is a Board member of the NAACP, and the president of the Bethune DuBois Institute.

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1 MAY 1998

MEDIA FAX NUMBERS

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AFRICAN-AMERICAN	
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CAPITOL SPOTLIGHT	745-7860
PRINCE GEORGES POST	301/627-8147
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THE METRO HERALD	540/587-4230
WASHINGTON INFORMER	574-3785
WASHINGTON SUN	882-9817
WASHINGTON NEW OBSERVER	232-1711
JET MAGAZINE	638-4753
NEW YORK AMSTERDAM NEWS	212/ 222-3842
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PHILA. NEW OBSERVER	215/665-8514
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AP	776-9570
UPI	301-577-3689
C-SPAN	737-3323
CNN	898-7565
KNIGHT RIDDER	628-4142
USA TODAY	703/558-3935 or 276-65 85
NEW YORK TIMES (local)	862-0340
WASHINGTON POST	334-4475
WASHINGTON TIMES	529-2471
REUTERS	898-8383
US NEWS & WORLD REPORT	955-2049

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19 July 1998

P.S. This is the FAX List I always use. I merely sent Dr. Tucker another copy of it on the above date.

- Chester

Billboard Bulletin

U2/R.E.M. 'Bootleg' Gets Legit Release

A recording of U2's "Otha" by Michael Stipe and Mike Mills of R.E.M. and Adam Clayton and Larry Mullen of U2, previously available only on bootlegs, will be officially released Sept. 23 by Island Records on its "Amazing Grace" benefit album. The quartet, billed as Automatic Baby, performed the song at MTV's 1993 Inaugural Ball. Also on the album, which benefits the Multiple Myeloma Fund at the Memorial Sloan-Kettering Cancer Center and other cancer causes, are tracks by Bob Marley and the Cranberries.

—Craig Rosen, L.A.

PD Musical Chairs

Two major-market PD changes took place yesterday. At Media-General-owned hot AC KRWB (Mix 96.5) Houston, PD Pat Paxton resigned. And at top 40 powerhouse KDWB (101.3) Minneapolis, longtime assistant PD/music director Rob Morris got the PD nod, replacing Dan Healy.

—Lee Abrams, N.Y.

WHAT'S ON

Late-night tonight: Jonathan Ledbetter), Garth Brooks (Comedy Central), Wu-Tang Clan (Vibe)

LaVern Baker's hosts CBS' *Country Fest* '97 tonight at 9 CST

Rap Critic Tucker Sees Slander In Shakur Lyrics

C. DeLores Tucker has a new gripe with Tupac Shakur—and this time, it's personal. Tucker, an outspoken critic and lobbyist against gangsta rap lyrics, has sued the late rapper's estate, claiming that lyrics on last year's *Death Row* free-for-all scope album "All Eyez On Me" made derogatory references to her. The suit, filed July 21 in U.S. District Court for the Eastern District of Pennsylvania, alleges intentional infliction of emotional distress, slander, and invasion of privacy. Also named as defendants are Interscope Records, Death Row Records, Time Warner, Seagram Co., Time Records, and various individuals associated with the companies, including Interscope president Jimmy Iovine. The suit seeks damages in excess of $10 million.

The suit contains references to the "All Eyez On Me" tracks "Wonda Why They Call U Bytch" and "How Do U Want It," citing the lyrics "C. DeLores Tucker, you're a mother fucker" and "Get your legs up trying to get dick. Keep your head up and your legs crossed dear Mr. DeLores Tucker." The suit claims that such language has "held her up as an object of scorn to more than 5 million people" (the album has sold 3.6 million units in the U.S., according to SoundScan) and that she has "suffered defamation of character and reputation," as well as mental pain, suffering, loss of life's pleasures, and loss for her life. In addition, the suit alleges that Tucker's husband, William Tucker, has suffered "a loss of solace, companionship, and consortium."

A lawyer for the Shakur estate didn't return calls seeking comment by deadline.

—Carolyn Hendler, N.Y.

DJ Don Steele Dies At 61

Veteran radio personality Pat Paul Don Steele, who held down the afternoon slot on Los Angeles oldies station KLEARTH (101.1), passed away in his sleep yesterday at his Hollywood home after a brief bout with lung cancer. He was 61. He is survived by his wife Breanne.

ITALY'S A&D LINKS WITH BMG

Continued from previous page

Blackwood's hit "My Love For You," featuring New York-born vocalist Taborah Adams and produced by A&D managing director Tony Monte, was No. 1 earlier this year in Italy, selling 25,000 copies; "Obsession" by Chane is currently in the country's AFI Mexico 2 Disco top 10.

—Gail Dutton, Amsterdam

Ex-Beatle Harrison Has Lump Removed

Former Fab Four member George Harrison recently had a small lump removed from his neck, according to an official press release from Apple Corps. Harrison was admitted to a hospital in Windsor, west of London, and was released 24 hours later after having the lump removed. The release also states that "there is no 'cancer scare,'" referring to reports that tissue removed during the operation is currently being tested for possible malignancy.

Gorlick To Head DreamWorks Promo

DreamWorks Records has named Mark Gorlick, former MCA senior VP of promotion and a 17-year industry veteran, head of promotion. He will work DreamWorks releases along with the promotion staff of Geffen Records, which markets and distributes DreamWorks; a spokesperson says DreamWorks has no plans to hire a full promotion staff. Gorlick was brought to DreamWorks by senior executive Bruce Tennenbaum (Bulletin, July 15).

—Craig Rosen, L.A.

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Saturday, [redacted] 1997

Style

Names & Faces
Compiled from staff and wire reports by Dana Hull

Not-in-the-Hood Music?

Activist C. DeLores Tucker, head of the National Political Congress of Black Women, has sued the estate of slain rap artist Tupac Shakur, saying his lyrics slandered her and damaged her relationship with her husband of more than 40 years, William Tucker.

Tucker and former U.S. drug policy director William Bennett campaigned to stop the distribution of violent and graphic "gangsta" rap and rock lyrics. She sued Shakur's estate for $10 million earlier this week in Philadelphia, claiming that Shakur's 1996 CD "All Eyes on Me," which contains derogatory and sexual references to her, caused her "great humiliation, mental pain, and suffering" and contributed to loss of her husband's "[redacted] companionship and consortium."

"It's [redacted] to destroy her [redacted]," said Richard Fischbein, an attorney who oversees Shakur's estate.

Bye-Bye, 'B&B'

Beavis and Butt-Head, MTV's animated teenagers, have been given the ax.

The last original episode of "B&B" is scheduled to air Oct. 10. MTV and the cartoon's creator, Mike Judge, agreed to call it quits after a four-year run.

"We've always had a great relationship with Mike Judge, but after 220 episodes, we decided it was time to move on," said MTV spokeswoman Sheryl Jones.

O.J. Loses the Piano

O.J. Simpson's piano was hauled out of his home in Los Angeles yesterday. Fred Goldman had the $20,000 Yamaha grand collected as part of the effort to satisfy the $33.5 million judgment against Simpson in

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EXH C-

(Publication page references are not available for this document.)
the 1994 deaths of Goldman's son, Ron, and Nicole Brown Simpson.

Goldman is also trying to get a $40,000 Ford Expedition that was presented to Simpson last month in honor of his 50th birthday. A hearing is scheduled for next week on who will get to keep the two items.

Simpson said the piano was a gift to his mother, Eunice, and that she plays it when she visits his home.

"I haven't fought them about anything that belongs to me, but this belongs to my mother," Simpson said.

Although Simpson was acquitted of criminal murder charges, a civil trial earlier this year found him liable for the two deaths.

Rendell's Plea

Philadelphia Mayor Ed Rendell was the big attraction at a rally Thursday sponsored by the National Association to Advance Fat Acceptance (NAAFA). Rendell told the crowd that on his last visit to a local movie theater he discovered that the seats were too small.

"I thought, 'Wouldn't it be a great idea to have large seats to accommodate everyone?' "

Members of NAAFA, formed in 1969, don't believe in dieting and focus on making sure that overweight people have equal rights.

"What you are fighting against is as discriminatory as anything else," Rendell said. "The hurt, the prejudice and discrimination that you face is every bit as real."

Here's Looking at Him

The Humphrey Bogart 32-cent postage stamp was unveiled this week in Los Angeles. Actress Lauren Bacall, Bogart's widow, presided over the Hollywood Boulevard ceremony.

TABULAR OR GRAPHIC MATERIAL SET FORTH IN THIS DOCUMENT IS NOT DISPLAYABLE

CAPTION: Mike Judge, above, wrapping up; Simpson's piano, rolling out.

---- INDEX REFERENCES ----

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EDITION: FINAL

Word Count: 492

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8/31/97 Hyde Park Citizen 7
1997 WL 11621818
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Thursday, [redacted]

V.8; N.38

Dr. C. Delores Tucker files Multi-million Suit against record producers o Gangsta Rap "Filth"
African American/Caribbean English

Dr. C. Delores Tucker files Multi-million Suit against record producers of Gangsta Rap "Filth"

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The suit was filed in the US District Court for the Eastern District, Philadelphia, PA, by Angino & Rovner, a prominent law firm in Pennsylvania Dr. Tucker's husband, William, a well-known businessman, joins her as a plaintiff in the suit.

It cases Tower Records, of Philadelphia, Interscope and Death Row Records, of Philadelphia, Interscope and Death Row Records, Inc. of Los Angeles, California, Ted Field and James Lovine, officials of Interscope, the giant entertainment corporation Time Warner, Seagram Co., MCA Inc., the estate of Tupac Shakur and others, in a sweeping defamation of character litigation alleging intentional infliction of emotional distress, slander and invasion of privacy.

Two of the Defendants, Interscope Records and Death Row Records, Inc. had filed suits of their own against Dr. Tucker, charging her with inducement to breach the contract between Death Row and Interscope. In their suit, the Tuckers claim that these defendants knew she had done no such thing, and that they filed these lawsuits only to harass, intimidate and cause emotional distress in order to deter her crusade against gangsta rap music.

She said since the suit was filed, she has been subjection to hours of depositions, suffered surveillance and intimidation, emotional stress, received death threats, causing her "reasonable fear" for her life because violence and death play a central role in the gangsta rap arena, noting that two prominent murders have been reported since the unsolved

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Exh 11

(Publication page references are not available for this document.)
murder in September 1996 of Tupac Shakur, all of which adversely effects her ability to travel freely without fear.

In a statement, Dr. Tucker, the NTCBW founder/chair, pointed out that "Shakur's Death Row Records, next to the last album, "All Eyez on Me" specifically defamed me in a most degrading way it called me a personal obscenity...for fighting against this music. And I feel that those who product, and promote this recording all over the world are equally guilty of defamation. Not only have I been defamed, I feel thousands of young women have been defamed by this greed driven, race driven and drug driven music.

This sexist lyrical filth that particularly defames black women, promotes drug use, violence and pandors pornography to children."

"My crusade is not against hip hop or rap music that merely chronicles the pain, crime and degradation of some African Americans' most devastated communities. Indeed, most rap and hip hop artists are highly talented and produce some of the world's most distinctive music. It is against the executive and publicists who administer "gangster rap", produce and circulate it all over the world, using vile, demeaning lyrics, encouraging and abetting some of their more aggressive artists in personally defaming their critics."

"It is the gangstas in the suites, not those in the streets that I am after. They hide behind the First Amendment while abdicating their personal and corporate responsibility."

Acknowledging for the first time that she has received threats during her long crusade against gangsta rap lyrics, and that some industry operatives have been prying into her private affairs "seeking dirt to demean me," she declared. "I am not unmindful of the risks to my life that I take in filing this action. However, I am even more concerned about the many young lives that have already been lost needlessly and the little children who will be lost if I do nor say, as I am saying to this industry - 'STOP NOW!'" Here are lyrics from two of the Tupac Shakur songs to which C. Delores Tucker objected, starting with "Wonda why They Call U B - tch", "Dear Ms. Delores Tucker keep stressin' me f - k with a muthaf - k mind figured you wanted to know you know why we call hoe b - tch and maybe this might help you understand.. it ain't personal...strictly business, baby, strictly business. So if you wonder why we call U b - tch. You wonder why we call U b - tch." And from the song "How Do U Want It." "Delores Tucker you's a muthaf - r instead of trying' to help a n - you destroy a brothe worst than the others Bill Clinton Mr. Bob Dole You too old to understand the way the game is told you're lame..so I gotta hit you with tha high facts won't someone listen? makin' millions n - , tap that they wanna censor me they ratha see me in a cell livin' in hell with only a few of us to live to tell now everybody talkin about us I could give a f -k. I'd be the first one to pump and cuss n - , tell me how

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(Publication page references are not available for this document.)
you want it." One of the songs continued to say, "Get your legs up try to get rich. Keep your head up and your legs closed. Love: Ms. C. Delores Tucker."

---- INDEX REFERENCES ----

COMPANY (TICKER): Seagram Co.; SEAGRAM CO. (VO T.VO)

NAMED PERSON: C. DELORES TUCKER

KEY WORDS: MUSIC (RAP); ETHICS (SOCIAL); LAW (COURTS)

NEWS SUBJECT: Arts & Entertainment; Public-Policy and Regulatory Issues (ART PBP)

NEWS CATEGORY: ARTICLE

INDUSTRY: Beverages; Distillers & Brewers (BVT D27)

Word Count: 874
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Wednesday, August 27, 1997

V.XXXIX; N.21

Dr. C. Delores Tucker Files Multi-Million Dollar Suit Against Record Producers Of Gangsta Rap 'Filth'
African American/Caribbean: English

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Ex. I

[Publication page references are not available for this document.]
affects her ability to travel freely without fear.

In a statement, Dr. Tucker, the NCCBW founder/Chair, pointed out that "Shakur's Death Row Records, next to the last album, 'All Eyes on Me' specifically defamed me in a most degrading way. It called me a personal obscenity ... for fighting against this music. And I feel that those who produce, and promote this recording all over the world are equally guilty of defamation. Not only have I been defamed, I feel thousands of young women have been defamed by this greed driven, race driven and drug driven music. This sexist lyrical filth that particularly defames Black women, promotes drug use, violence and panders pornography to children."

"My crusade is not against hip hop or rap music that merely chronicles the pain, crime and degradation of some African Americans' most devastated communities. Indeed, most rap and hip hop artists are highly talented and produce some of the world's most distinctive music. It is against the executives and publicists who administer 'gangsta rap,' produce and circulate it all over the world, using vile, demeaning lyrics, encouraging and abetting some of their more aggressive artists in personally defaming their critics."

"It is the gangstas in the suites, not those in the streets that I am after. They hide behind the First Amendment while abdicating their personal and corporate responsibility."

Acknowledging for the first time that she has received threats during her long crusade against gangsta rap lyrics, and that some industry operatives have been prying into her private affairs "seeking dirt to demean me," she declared, "I am not unmindful of the risks to my life that I take in filing this action. However, I am even more concerned about the many, many young lives that have already been lost needlessly and the little children who will be lost if I do not say, as I am saying to this industry - 'STOP NOW!'"

---- INDEX REFERENCES ----

COMPANY (TICKER): Seagram Co.: SEAGRAM CO. (VO T.VO)

NAMED PERSON: C. DELORES TUCKER

KEY WORDS: LAW (COURTS); MUSIC (RAP); INDUSTRIES (MUSIC)

NEWS SUBJECT: Public-Policy and Regulatory Issues; Arts & Entertainment (PAP ART)

NEWS CATEGORY: ARTICLE

INDUSTRY: Film, Television & Music; Beverages; Distillers & Brewers (MOV BVR DST)

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Thursday, August 28, 1997

T.25; N.38

Dr. C. DeLores Tucker files $Multi-Million suit
African American/Caribbean/ English

Dr. C. DeLores Tucker files $Multi-Million suit

DR. C. DeLores Tucker whose organization, the National Political Congress of Black Women, Inc. (NPCBW) has waged an on-going battle against the recording industry and its use of misogynous, sexist, racist and pornographic lyrics targeting the nation's children in gangsta rap music, has filed a multi-million dollar suit directed at the heart of the gangsta rap music in the U.S.

The suit was filed in the U.S. District Court for the Eastern District, Philadelphia, PA, by Angino & Rovner, a prominent law firm in Pennsylvania. Dr. Tucker's husband, William, a well-known businessman, joins her as a plaintiff in the suit.

It names Tower Records, of Philadelphia, Interscope and Death Row Records, Inc. of Los Angeles, California, Ted Field and James Iovine, officials of Interscope, the giant entertainment corporation Time Warner, Seagrem Co., MCA Inc., the estate of Tupac Shakur and others, in a sweeping defamation of character litigation, alleging intentional infliction of emotional distress, slander and invasion of privacy.

Two of the defendants, Interscope Records and Death Row Records, Inc. had filed suits of their own against Dr. Tucker, charging her with inducement to breach the contract between Death Row and Interscope. In their suit, the Tuckers claim that these defendants knew she had done no such thing, and that they filed these lawsuits only to harass, intimidate, and cause emotional distress in order to deter her crusade against gangsta rap music.

She said since the suit was filed, she has been subjected to hours of depositions, suffered surveillance and intimidation, emotional stress, received death threats, causing her "reasonable fear" for her life because violence and death play a central role in the gangsta rap scene, noting that two prominent murders have been reported since the unsolved murder in September 1996 of Tupac Shakur, all of which adversely affects her ability to travel freely without fear.

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—— INDEX REFERENCES ——

COMPANY (TICKER): Seagram Co.; SEAGRAM CO. (VO T.VO)

NAMED PERSON: C. DELORES TUCKER

KEY WORDS: LAW (COURTS); INDUSTRIES (MUSIC); MUSIC (RAP)

NEWS SUBJECT: Public-Policy and Regulatory Issues; Arts & Entertainme (PEP ART)

NEWS CATEGORY: ARTICLE

INDUSTRY: Film, Television & Music; Beverages; Distillers & Brewe (MOV BVG DST)

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Multi-Million Suit Against Record Producers of "Filth"
Deborah A. Wright
African American/Caribbean; English

Multi-Million Suit Against Record Producers of "Filth"

Submitted by The National Political Congress of Black Women, Inc

Washington, D.C. - Dr. C. Delores Tucker, whose organization, the National Political Congress of Black Women, Inc. (NPCBW) has waged an on-going battle against the recording industry and its use of misogynous, sexist, racist and pornographic lyrics targeting the nation's children in gansta rap music, has filed a multi-million dollar suit directed at the heart of the gangsta rap music in the U.S.

The suit was filed in the US District court for the Eastern District, Philadelphia, PA, by Angino & Rovner, a prominent law firm in Pennsylvania. Dr. Tucker's husband, William, a well-known businessman joins her as a plaintiff in the suit.

It names Tower Records, of Philadelphia, Interscope and Death Row Records, Inc. of Los Angeles, California, Ted Field and Jamma Irvine, officials of Interscope, the giant entertainment corporation Time Warner, Seagram Co., MCA Inc., the estate of Tupac Shakur and others, in a sweeping defamation of character litigation, alleging intentional infliction of emotional distress, slander and invasion of privacy.

Two of the Defendants, Interscope Records and Death Row Records, Inc. had filed suits of their own against Dr. Tucker, charging her with inducement to breach the contract between Death Row and Interscope.

In their suit, the Tuckers claim that these defendants knew she had done no such thing, and that they filed these lawsuits only to harass, intimidate, and cause emotional distress in order to deter her crusade against gansta rap music.

She said since the suit was filed, she has been subjected to hours of depositions, suffered surveillance and intimation, emotional stress, received death threats, caused her "reasonable fear" for her life because violence and death play a central role in the gangsta rap arena,

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noting that two prominent murders have been reported since the unsolved murder in September 1996 of Tupac Shakur, all of which adversely affects her ability to hop or rap music that merely chronicles the pain, crime and degradation of some African Americans' most devastated communities. Indeed, most rap and hip hop artists are highly talented and produce some of the world's most distinctive music. It is against the executives and publicists who administer "gangsta rap," produce and circulate it all over the world, using vile, demeaning lyrics, encouraging and abetting some of their more aggressive artists in personally defaming their critics."

"It is the gangstas in the suites, not those in the streets that I am after. They hide behind the First Amendment while abdicating their personal and corporate responsibility."

Acknowledging for the first time that she has received threats during her long crusade against gangsta rap lyrics, and that some industry operatives have been prying into her private affairs "seeking dirt to demean me," she declared.

"I am not unmindful of the risks to my life that I take in filing this action. However, I am even more concerned about the many, many young lives that have already been lost needlessly and the little children who will be lost if I do not say, as I am saying to this industry — 'STOP NOW!" Here are lyrics from two of the Shakur songs to which C. Delores Tucker objected, starting with "Wonda Why They Call U B--ch".

"Dear Ms. Delores Tucker keep stressin' me f--k with a muthaf--k mind I figured you wanted to know you know why we call hoe b--ch and maybe this might help you understand...it ain't personal...strictly business, baby, strictly business. So if you wonder why we call U b--ch. You wonder why we call U b--ch."

And the song "How Do U Want It."

"Delores Tucker you're a muthaf--r instead of trying' to help a n------

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you destroy a brotha worst than the others Bill Clinton Mr. Bob Dole You too old to understand the way the game is told you're lame...so I gotta hit you with the high facts won't someone listen? makin' millions n-----, top that they wanna censor as they ratha see us in a cell livin' in hell with only a few of us to live to tell now everybody talken about us I could give a f—k, I'd be the first one to bomb and cum N-----, tell us how you want it."

One of the songs continued to say:

"Get your legs up try to get rich. Keep your head up and your keys closed, dear Ms. C. Delorres Tucker."

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Photo (C. Delorres Tucker)

---- INDEX REFERENCES ----

COMPANY (TICKER): Seagram Co./ SEAGRAM CO. (VO T.VO)

NAMED PERSON: C. DELORES TUCKER AND TUPAC SHAKUR

KEY WORDS: INDUSTRIES (MUSIC); LAW; ORGANIZATIONS (WOMEN'S GROUPS); MUSIC (RAP)

NEWS SUBJECT: Public-Policy and Regulatory Issues; Arts & Entertainment (POP ART)

NEWS CATEGORY: ARTICLE

INDUSTRY: Film, Television & Music; Beverages; Distillers & Brewers (MOV BVG DST)

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Monday, September 1, 1997

Vol. 92, No. 13, ISSN: 0021-5996

G. Delores Tucker files $10 million lawsuit against Tupac Shakur's estate.

Dr. C. Delores Tucker, an outspoken critic of gangsta rap, has filed a $10 million lawsuit against the estate of the late rapper Tupac Shakur charging that he made derogatory comments about her in his music.

Dr. Tucker, chair of the National Political Congress of Black Women Inc., says songs on Shakur's hit album All Eyez On Me have caused her "mental pain, suffering and inconvenience."

The suit also notes because of Shakur's music, Dr. Tucker has "suffered severe emotional distress including, but not limited to, feelings of fright,, shock, humiliation and outrage."

On the tune Words Why They Call U B------h Shakur raps: "Got your legs up trying to get rich. Keep your head up and your legs closed Dear Ms. Delores Tucker." Dr. Tucker states in the suit that the lyrics allude "to prostitution and tells why women are called bitches."

On the tune How Do You Want It Shakur raps: "C. Delores Tucker .... instead of trying to help a brother you destroy a nigga."

The suit filed jointly by Dr. Tucker and her husband, businessman William Tucker, states that Mr. Tucker "as a result of his wife's injuries, suffered a loss of advice, companionship and consortium."

The suit, which alleges intentional infliction of emotional distress, slander and invasion of privacy, was filed in the U.S. District Court for the Eastern District, Pennsylvania. It also names Tower Records of Philadelphia; Interscope and Death Row Records of Los Angeles; Ted Field and James Levine, officials of Interscope, Time Warner, Seagrem Co., MCA Inc. and others.

Dr. Tucker said in a press statement that Shakur's album All Eyez On Me, released in 1996, "specifically defamed me in a most degrading way. It called me a personal obscenity ... for fighting against this music. And I feel that those who produce and promote this recording all over the world are equally guilty of defamation."

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(Publication page references are not available for this document.)

She added, "Not only have I been defamed, I feel thousands of young women have been defamed by this greed-driven, race-driven and drug-driven music. This sexist lyrical filth particularly defames Black women, promotes drug use, violence and panders pornography to children," she stated.

Shakur was killed in a drive-by shooting in Las Vegas last year (Jet, Sept. 30, 1996).

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photograph illustration

---- INDEX REFERENCES ----

NAMED PERSON: C. DELORES TUCKER

KEY WORDS: RAP SINGERS

Word Count: 373
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INSIDE

Anti-drug fighters unfazed despite thr

Tucker: Media distorts lawsuit

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C. DeLores Tucker's husband defends her

(Continued from Page 1-A)

ward her husband, William, in "suffer a loss of advice, companionship and encouragement."

The portion of the lawsuit was widely reported, and widely misinterpreted, according to William Tucker.

"The way the media distorted this is monstrous," he said during a telephone interview with the Post yesterday. "My wife has never spoken or appeared in the media about our private or personal life but that's the way they tried to project the story."

He said the suit was filed mainly over words said "moments in the record industry" parked up on the suit and put their own version on the filing.

"This lawsuit is one about Tupac's estate," said William Tucker. "My task is include him. He is the one who deserved best. This is not about our personal life or sex. It's about making the record industry accountable and responsible for their conduct and for their positions and their policies toward Black people.

"The issue of the lawsuit is industrial, criminal abuse, harassment and exploitation. That's what the lawsuit is all about," he said. "All the other nonsense they have tried to project is untrue."

William Tucker said he did not want being included in the lawsuit because "anytime anyone mentions my wife, it allows and harms my personally."

Privately asked how the lyrics cited of her husband, he said, "That's just a total obsession [on the record] — a small part of it. We have to represent the grassroots community as we see and the only way to stop them is a lawsuit to happen to you."

Shirley Little, the spokesman manager and a D.J. at Power 99, said the lawsuit has not caused long-term problems for the Tuckers.

"Whatever the outcome of the suit, I am sure it will be very interesting. I can't say how a person's name in a song would affect your own life since I have never had my name mentioned in a song," said Little.

Jerry Wells, long-term D.J. and production and creative manager for WDAS FM/AM stations, said he doesn't think "censoring" young artists is the solution.

"I thought this was some sort of dinner thing, and I know what song they are talking about, but I wasn't aware the they are selling downtown. The oldest generation has to understand that the more they [trade against] something, the more the younger generation embraces it," he said.

Darryl Jones, general manager of WPHI 102.3 FM, added that, "Dr. Tucker has a right as the wife to be concerned if she feels her name is being slandered. If hers can't watch any type of attack on a person publicly, but person has the right and responsibility to redress that attack."

The suit named Time Warner of Philadelphia, Interscope and Death Row Records Inc. of Los Angeles, Tef Poll and Jamie Jerkins, officials of Interscope, entertainment conglomerate Time Warner, Seagrams Co. and MCA Inc.

C. DeLores Tucker's Harrisburg attorney Robert C. Hagins did not return calls yesterday.

Richard Friedman, a New York attorney who is co-administrator of Shakur's estate, said he was baffled by the suit.

"It's hard for me to conceive how these claims could destroy her reputation," Friedman said. "But we can only wait for proof to be revealed in court."

C. DeLores Tucker, the founder of the National Political Congress of Black Women Inc. (NPCBW), which has waged an on-going battle against the recording industry and what she has called misogynistic, sexist, racist and pornographic lyrics targeting the nation's children in gangsta rap music, earlier filed a multi-million dollar suit directed at the heart of the gangsta rap music.

Two of the defendants, Interscope Records and Death Row Records Inc., filed countersuits of their own against Tucker, charging her with defamation to boost the record industries fresh face and fortunes.

In their suit filed last week, the Tuckers claimed Interscope and Death Row Records knew she had done no such thing, and that they filed counterpoint only to deter her crusade against gangsta rap music.

C. DeLores Tucker said since the NPCBW suit was filed, she has been subjected to bouts of depression, inflicted surveillance and intimidation, continued stress, received death threats, causing her "traumatic brief" for her life because violence and death play a central role in the gangsta rap scene.

She noted that two prominent singers have been reported since the unofficial opening in September 1996 of Tupac Shakur, all of which adversely affects her ability to travel freely without fear.

In a statement, C. DeLores Tucker pointed out that "Shakur's Death Row Records, next to the last album, 'All Eyez on Me,' specifically defamed me in a most degrading way. It refers on a personal relationship ... the fighting against the music. And I feel that those who produce, and promote this recording all over the world are equally guilty of defamation. Not only have I been defamed, I feel thousands of young women have been defamed by this [gang-driven, race-driven and drug-driven music. The music hated] with Our particularly defames Black women promotes drug use, violence and positive pornography to children."



Tribune

COMMENTARY

Editorial

C. DeLores Tucker faces uphill battle

Let's find ...

EXH. N

PHILADELPHIA'S LARGEST WEEKLY ■ VOL. XXVI NO. 33 ■ AUGUST 13, 1997

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Media Has C. DeLores Tuckered

AFTER FILING A $10 MILLION defamation lawsuit against **Time Warner Records** and the estate of murdered rap artist **Tupac Shakur**, anti-rap crusader **C. DeLores Tucker** is now complaining that the media is out to distort the facts of the lawsuit. Claiming that clever rhymes in Shakur's **"All Eyez on Me"** release such as "Delores Tucker, you're a mother_____" caused her "great humiliation, mental pain and suffering," Tucker included her husband, William, in the suit, claiming that he had suffered "a loss of advice, companionship and consortium." Although the *Inquirer* didn't even cover the filing of the suit, the *Daily News* trumpeted on its August 2 front page, "C. DeLores Tucker Claims CD Gave Her A Dirty Rap: Suit vs. Shakur estate says "vile" lyrics ruined her rep and her sex life." Daily News managing editor **Brian Toolan** defends the paper's treatment of the story, saying that "it's generally understood that's what loss of consortium is supposed to mean in the law." But Tucker's attorney, **Richard C. Angino** disputes this, stating that the phrase is a standard addition to lawsuits of this type and refers to all aspects of the marital relationship, not necessarily sex. "This is why people sometimes get so upset with the media," says Angino. One disinterested personal injury attorney who wished not to be named agrees with Angino, but adds that, "Loss of consortium is a lot of nonsense. I once recovered $50,000 for an injured women, and the jury gave her husband one dollar for loss of consortium."

—N. W.

Yard Art Better Than Flamingos And Gnomes

PHILADELPHIA ARTISTS wrote another chapter in the do-it-yourself exhibition manual this weekend, when more than 150 art-lovers visited the South Philadelphia backyard of painter **Nancy Lewis** and sculptor **Alexander Cheves** for a look at their **Backyard Sculpture Invitational**. Part of a growing trend in which which artists are creating their own exhibits in vacant stores, apartments and private homes, the Backyard Invitational features works by **Astrid Bowlby, Nick Fox, Jim Hinz, Laura Hutton, Emily Thompson, August Ventimiglia** and Cheves himself, all in a 1,000 square-foot rowhouse backyard. The site-specific works all deal with the notion of the backyard as an urban "oasis," and although the exhibit remains open through August 15, you'll have to

FIL JUL 21 1997

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION NO. 97CV-4717

C. DELORES TUCKER and WILLIAM TUCKER, her husband, Plaintiffs

v.

MTS, INC. t/a TOWER RECORDS; INTERSCOPE, INC.; INTERSCOPE RECORDS; TED FIELD; TIME WARNER; JAMES IOVINE; SEAGRAM CO.; MCA INC.; MERRILL LYNCH; DEATH ROW RECORDS, INC.; DAVID KENNER; and AFENI SHAKUR as administratrix of the ESTATE OF TUPAC SHAKUR, Defendants

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JUDGE _____
JURY TRIAL DEMANDED

COMPLAINT

1. Plaintiff C. Delores Tucker is the chair of the non-profit National Congress of Black Women, Inc. She is the former Secretary of State of the Commonwealth of Pennsylvania and Chair of the Democratic National Committee Black Caucus and the National Board of N.A.A.C.P.

2. Plaintiff C. Delores Tucker resides in the Commonwealth of Pennsylvania.

3. Plaintiff William Tucker is married to C. Delores Tucker and resides in the Commonwealth of Pennsylvania.

4. Defendant MTS, Inc., under the trade name of Tower Records, is a California Corporation with its principal place of business in California.

5. Defendant Interscope, Inc. is a California Corporation with its principal place of business in California.

6. Defendant Interscope Records is a California General Partnership with its principal place of business in California.

7. Defendant Ted Field is an owner or partner and/or has a financial interest in Interscope Records and resides in a state other than Pennsylvania.

8. Defendant Time Warner has or had a financial interest in Interscope Records, and its principal place of business is in a state other than the Commonwealth of Pennsylvania.

9. Defendant James Iovine is the President of Interscope Records and resides in a state other than Pennsylvania.

10. Defendant Seagram Co. is a company with a financial interest in Interscope and has its principal places of business outside of the Commonwealth of Pennsylvania.

11. Defendant MCA Inc. and/or Universal are corporations with a financial interest in Interscope and principal places of business in a state other than the Commonwealth of Pennsylvania.

12. Defendant Merrill Lynch is a business entity with a financial interest in Interscope and its principal place of business in a state other than the Commonwealth of Pennsylvania.

13. Defendant Death Row Records, Inc., is a California Corporation with its principal place of business in California.

14. David Kenner is an attorney representing Death Row Records, Inc., may have a proprietary and/or other financial interest in Death Row Records, and resides outside the Commonwealth of Pennsylvania.

15. Defendant Afeni Shakur who resides in a state other than Pennsylvania is the Administratrix of the Estate of deceased Defendant Tupac Shakur.

16. At all times relevant to this Complaint, up until his death on September 13, 1997, deceased Defendant Tupac

Shakur was a servant, agent, apparent agent and/or employee of Defendant Death Row Records and was acting within the course and scope of employment for Death Row Records.

17. At all times relevant to this Complaint, James Iovine was a servant, agent, and/or employee of Interscope Records and was acting within the course and scope of employment for Interscope Records.

18. At all times relevant to this Complaint, David Kenner was a servant, agent, and/or employee of Death Row Records, Inc. and was acting within the course and scope of employment for Death Row Records.

19. At all times relevant to this Complaint, Defendant Interscope Records had an exclusive distribution agreement with Defendant Death Row Records through which Interscope Records distributed under its label, recordings produced by Defendant Death Row Records.

20. At all times relevant to this Complaint, Defendant Interscope Inc., was the managing general partner of Defendant Interscope Records.

21. At all or various times relevant to this Complaint, Interscope Records was 50% owned by Seagram Co.'s MCA Inc.

22. At all or various times relevant to this Complaint, Interscope Records was owned in part by Time Warner or Time Warner had a financial interest in Interscope.

23. Prior to February, 1996, Plaintiff C. Delores Tucker was the leader of a large group of religious, moral, and law abiding citizens who marched, lobbied, and campaigned against the pornographic and drug oriented misogynistic lyrics of "gangsta" rap as created, promoted, distributed, and marketed by various defendants to minors without restriction.

24. "Gangsta rap" is a slang expression using vernacular for the word "gangster" which, by definition refers to one

engaged in anti-social or criminal behavior. Furthermore, the music contains vile, profane, obscene and indecent lyrics which glorify drugs, violence, and illicit sex. "Rap" or "Hip Hop" is a form of music, more spoken than sung, and can be distinguished from "gangsta rap" in that it chronicles life in the ghetto without obscene and indecent lyrics, and may have redeeming social value.

25. Various defendants involved with Death Row Records and "gangsta" rappers take pride in the sex, drugs and "gangsta" violent behavior and its influence on increased record sales.

26. Plaintiff has focused her attention on stopping the production and distribution of said music to impressionable youth, because it tends to corrupt the morals of minors, in violation of 18 Pa.C.S.A. §6301(a), that some of it is obscene and unprotected by the Constitution, and some is "explicitly sexual material" in violation of 18 Pa.C.S.A. §5903(c). See Exhibits "A" and "B" attached hereto.

27. Said efforts met with widespread support across political, racial and economic lines, including support from William Bennett, former U.S. Secretary of Education, U.S. Senator Joseph Lieberman, Majority Leader and Vice Presidential candidate Robert Dole, and General Colin Powell.

28. In February, 1996, Defendant Interscope Records, distributed under its label, "All Eyez On Me", which is a record containing music performed by deceased Defendant recording gangsta rap superstar Tupac Shakur and produced by Defendant Death Row Records.

29. Contained on the aforementioned recording entitled "All Eyez on Me" are recordings entitled "Wonda Why they Call B" and "How Do You Want It."

30. Contained in the aforementioned recording entitled "How Do You Want It" were lyrics stating "C. Delores Tucker

you're a mother fucker, instead of trying to help a brother you destroy a nigga."

31. Contained in the aforementioned recording entitled "Wonda Why they Call B" were lyrics stating "Got your legs up trying to get rich. Keep your head up and your legs closed Dear Ms. Delores Tucker" alluding to prostitution and tells why women are called bitches.

32. In January, 1996, Plaintiff C. Delores Tucker engaged in a lawful protest against the sale of gangsta rap music to minors by Defendant MTS, Inc., under the trade name of Tower Records, in Philadelphia, Pennsylvania.

33. On March 2, 1996, Plaintiff again, in the exercise of her constitutional right to protest, engaged in a protest on the premises of Defendant, MTS, Inc., under the trade name of Tower Records, in Philadelphia, Pennsylvania to stop the sale to minors of sound recordings containing sexually explicit lyrics as expressly prohibited by 18 Pa. C.S.A. §5903 and 18 Pa. C.S.A. §6301(a). See Exhibits "A" and "B".

34. As a result of her lawful protest, Plaintiff was arrested, handcuffed, and forcibly removed by police from the premises of Defendant MTS, Inc., under the trade name of Tower Records.

35. The aforementioned removal of Plaintiff C. Delores Tucker from the premises of Defendant MTS, Inc., under the trade name of Tower Records, took place under the express direction or with the knowledge and consent of Defendant MTS, Inc., under the trade name Tower Records.

36. Sometime after February 1, 1996, Defendant MTS, Inc., under the trade name of Tower Records, nevertheless offered for sale and sold to minors the aforementioned sound recording entitled "All Eyez On Me", and other gangsta rap albums containing sexually explicit messages, offensively coarse language and lewd and indecent words about Plaintiff C. Delores Tucker.

37. Defendants all participated in various ways, in the conceiving of the idea, creating the recording, the marketing/distributing and not recalling "All Eyez On Me" which contained sexually explicit messages, offensively coarse language, and lewd and indecent words about Plaintiff C. Delores Tucker in violation of 18 Pa. C.S.A. §5504.

38. In August, 1995, Defendant Interscope filed suit against Plaintiff C. Delores Tucker in California charging her, *inter alia,* with Inducement to Breach the Contract between Death Row and Interscope.

39. Defendants knew full well that Plaintiff had done no such thing and filed the false claim only to embarrass her, to cause emotion distress and to deter her crusade against gangsta rap.

40. In May, 1997, the U.S. District Court for the Central District of California (Case No. CV 95-5444), Judge M. Takasugi issued an opinion that there was no breach of contract and that Plaintiff did not induce a breach of the contract as alleged by Interscope, which of course they already knew.

41. Following the lawsuits and the release of the aforementioned recordings, Plaintiff, C. Delores Tucker has reasonable fear for her life because violence and death play a central role in the gangsta rap arena. Indeed, two prominent murders have been reported since the unsolved murder of Tupac Shakur in September, 1996.

42. Since the lawsuits and the release of the aforementioned recordings Plaintiff, C. Delores Tucker has received death threats.

43. The lawsuits and the release of the aforementioned recordings were intended to and did cause Plaintiff C. Delores Tucker severe emotional distress.

44. By using vile and offensive language, the recordings have held her up as an object of scorn to more than 5,000,000 people, including children in Philadelphia and elsewhere.

45. Since the lawsuits and the release of the aforementioned recordings C. Plaintiff C. Delores Tucker has suffered defamation of character and reputation.

46. Plaintiff, who is frequently called upon to speak at churches throughout the country, is a moral and religious daughter of a well-known, respected Philadelphia minister, now deceased, and has siblings, extensive family, relatives, and thousands of friends in Philadelphia and throughout the country and world, who have heard or heard about the said recording and lawsuit.

47. As a result, Plaintiff C. Delores Tucker, has incurred medical expense; has undergone mental pain, suffering, and inconvenience; loss of life's pleasures; fears for her life; has lost her personal freedom to travel freely where and when she desires; and claim is made therefor.

48. As a result of the aforesaid injuries, Plaintiff C. Delores Tucker will incur medical expense; will undergo mental pain, suffering, and great inconvenience; loss of life's pleasures; fear for her life; lose her personal freedom to travel freely where and when she desires; and claim is made therefor.

49. As a result, Plaintiff C. Delores Tucker has been, and in the future will be, subject to great humiliation and embarrassment, and claim is made therefor.

50. Plaintiff's husband, William Tucker has as a result of his wife's injuries, suffered a loss of advice, companionship and consortium.

WHEREFORE, Plaintiffs C. Delores Tucker and William Tucker demand judgement against Defendants in an amount in excess of $10,000,000, exclusive of interest and costs, and in excess of any jurisdictional amount requiring compulsory arbitration.

COUNT I—INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

C. Delores Tucker and William Tucker v. MTS, Inc., t/a Tower Records, Interscope Inc., Interscope Records, Ted Field, James Iovine, Seagram Co., MCA Inc., Merrill Lynch, Death Row Records, Inc., Estate of Tupac Shakur, Afeni Shakur as Administratrix of the Estate of Tupac Shakur, Time Warner, and David Kenner.

51. Paragraphs 1 through 50 of this Complaint are incorporated herein by reference.

52. Deceased Defendant Tupac Shakur's conduct as set forth above was extreme and outrageous.

53. As a direct and proximate result of Defendant Tupac Shakur's extreme and outrageous conduct as set forth above, Plaintiff C. Delores Tucker suffered severe emotional distress including but not limited to, feelings of fright, shock, humiliation, and outrage.

54. Defendants all participated in various ways, including the bringing of lawsuits, submitting Plaintiff Tucker to eleven days of depositions, the conceiving of the idea, creating the recording, the marketing/distributing and not recalling "All Eyez On Me" for the specific purpose of causing Plaintiff C. Delores Tucker to suffer extreme distress, fear for her life, and to lessen her resolve against "gangsta" rap.

55. Defendants' actions as set forth above constituted extreme and outrageous conduct that evidence a wanton disregard for the safety and well-being of Mrs. Tucker sufficient to merit an award of punitive damages, and claim is made therefor.

WHEREFORE, Plaintiffs C. Delores Tucker and William Tucker demand judgment against Defendants in an amount in excess of $10,000,000, exclusive of interest and costs, and in excess of any jurisdictional amount requiring compulsory arbitration.

COUNT II—SLANDER

C. Delores Tucker and William Tucker v. MTS, Inc., t/a Tower Records, Interscope Inc., Interscope Records, Ted Field, James Iovine, Seagram Co., MCA Inc., Merrill Lynch, Death Row Records, Inc., Afeni Shakur as Administratrix of the Estate of Defendant Decedent Tupac Shakur

56. Paragraphs 1 through 55 of this Complaint are incorporated herein by reference.

57. Deceased Defendant Tupac Shakur's aforementioned lyrics referring to Plaintiff C. Delores Tucker in "All Eyez On Me" were false and defamatory when produced, marketed, distributed and sold.

58. Deceased Defendant Tupac Shakur's aforementioned defamatory lyrics were produced with malice, meaning that said lyrics were produced with knowledge that they were false.

59. Defendants other than Deceased Defendant Tupac Shakur knowingly participated in the creation, marketing, distribution, and sale of the slanderous recording "All Eyez On Me" and refused to recall same even though there was precedent involving anti-semitic lyrics by Michael Jackson.

60. As a result of the malicious lyrics, Plaintiff C. Delores Tucker's reputation has been subject to ridicule, insult, and her reputation damaged.

61. Defendants' actions as set forth above constituted extreme and outrageous conduct that evidence a wanton disregard for the safety and well-being of Mrs. Tucker sufficient to merit an award of punitive damages, and claim is made therefor.

WHEREFORE, Plaintiffs C. Delores Tucker and William Tucker demand punitive judgement against Defendants in an amount in excess of $10,000,000, exclusive of interest and costs, and in excess of any jurisdictional amount requiring compulsory arbitration.

COUNT III—INVASION OF PRIVACY

C. Delores Tucker and William Tucker v. MTS, Inc., t/a Tower Records, Interscope Inc., Interscope Records, Ted Field, James Iovine, Seagram Co., MCA Inc., Merrill Lynch, Death Row Records, Inc., Afeni Shakur as Administratrix of the Estate of Defendant Decedent Tupac Shakur

62. Paragraphs 1 through 61 of this Complaint are incorporated herein by reference.

63. Deceased Defendant Tupac Shakur's lyrics contained in the aforementioned recording "All Eyez On Me" were intentionally created, recorded, markerted/distributed, sold, and not recalled for the purpose of intruding upon the private affairs and concerns of Plaintiff C. Delores Tucker.

64. Defendants all appropriated to their own use and benefit, the name of C. Delores Tucker by creating, recording, marketing/distributing, selling and not recalling the aforementioned recording "All Eyez On Me."

65. Defendants all participated in various ways in placing Plaintiff C. Delores Tucker before the public in a false light of a kind highly offensive to the reasonable man by creating, recording, marketing/distributing, selling and not recalling the aforementioned recording "All Eyez On Me."

66. Defendants all participated in various ways in unreasonably and seriously interfering with Plaintiff C. Delores Tucker's interest in not having her name or likeness exhibited to the public by creating, recording, marketing/distributing, selling and not recalling the aforementioned recording "All Eyez On Me."

WHEREFORE, Plaintiffs C. Delores Tucker and William Tucker demand punitive judgement against Defendants in an amount in excess of $10,000,000, [illegible]sive of interest

and costs, and in excess of any jurisdictional amount requiring compulsory arbitration.

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Dated: 7/18/97

26 R NEW YORK POST FRIDAY, 1997

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Business

THE RAP AGAINST TIME

Levin gets earful at yearly meeting

By JON ELSEN

Time Warner CEO Gerald Levin thought his gangsta-rap headache was over when he got rid of Interscope Records last year.

Not quite.

Anti-gangsta rap crusader C. DeLores Tucker took the floor at Time Warner's annual meeting at the famed Apollo Theater in Harlem yesterday and blasted Levin for what she called Time Warner's supporting message on gangsta rap.

"Shame on our family, Time Warner, for preaching this filth, which is corrupting our youth," said Tucker, chairwoman of the National Political Congress of Black Women. "We're condoning the destruction of our children."

Tucker referred to two studio albums on Time Warner's Atlantic Label and created the well-worked, polite crowd to a gruesome reading of sexually graphic lyrics by the rapper Lil' Kim.

When she finished, and walked to the stage to kiss Apollo's "Tree of Hope" — traditionally touched by performers before they go on stage — she was met with cheers and applause by Time Warner shareholders.

Lil' Kim and the other rap artist Tucker mentioned, Junior M.A.F.I.A., are two of Atlantic's best-selling rap acts. They have sold more than 10,000 records, generating an estimated $10 million in revenue for Time Warner's Interscope unit, which distributes them.

Atlantic Records says it is just major news with the producer of records by Lil' Kim and Junior M.A.F.I.A.

Undeterred Entertainment, which produces their records, is now in a dispute with Atlantic and is dropping its services in other labels. But while Undeterred may take Lil' Kim and Junior M.A.F.I.A. elsewhere, Time Warner has negotiated for itself the right to release the more of their recordings, even if Undeterred leaves.

Shareholders' response to Tucker's comments at the meeting gave an indication of what Levin may be up against next year when he disrupted Interscope at the urging of Tucker and William Bennett.

But Levin is up against goodwill on the music division as well; it's the one Time Warner unit not performing strongly these days.

And after he got rid of Interscope, Seagram's MCA unit picked up half of the company and went on to grow more than $200 million with it last year. Interscope released records by Death Row artists Tupac Shakur and The Dogg Pound.

Levin's response yesterday was his only terse comment to an otherwise smooth annual meeting, at which he noted his company's surging stock price and promised that the company will continue that strong performance for the rest of the year.

He told Tucker that Time Warner is talking with young musicians about the impact of their music, and noted that the objectionable records are only a few of the 7,500 released by Time Warner each year. He also counted off black executives who are "all part of the Time Warner family."

After the meeting, Levin said that Time Warner President Richard Parsons went to Washington, D.C., last week to talk to Tucker, but she wouldn't see him.

Asked if the company plans to continue producing records by Lil' Kim, Levin said to ask those at Time Warner's Atlantic records unit, adding, "I don't want to deal with the question anymore." But officials at Atlantic could not be reached.

Some have questioned Tucker's credibility as a critic because of accounts that she profited from pornography properties in Philadelphia. And she has been criticized in a lawsuit filed by Interscope suggesting she has an economic motive for criticizing rap music.

Hilary Rosen, president of the Recording Industry Association of America, said that Lil' Kim "wouldn't be on the list of gangsta rap."

"Her records are labeled as having explicit lyrics. "If you're the parent where you don't like it, don't buy it, and you probably should tell your friends not to buy it either," she said.

MEDIA CITY

Rap attack

EXCERPT OF LYRICS TO "BIG MOMMA THANG" FROM LIL' KIM'S ALBUM "HARDCORE"

"Bahamas in the spring,
baby it's a Big Momma Thing
can't you tell by the diamonds in my rings
That's how many times I c**** me
I wanna consistently one
and another one, and another one,
and another one
24 carat n—a, that's when I'm f—g
with the average n—a
Word to the brothers
be ballin' me and sis
Don't ya like the way I roll
and play wit' my p—y
tell me what in your mind
when the tongue is in the p—y
Is it marriage (damn this bitch is bad)
baby carriage (damn I love that ass)
s—t no, on a dime s—t I'll f— you,
got to keep 'em comin' all the time"



BEST AVAILABLE COPY

VIOLENCE, DRUGS, & SEXUALLY MISOGYNIST LYRICS DISTRIBUTED BY

Tupac Shakur Interscope	*Strictly 4 My Nigga:* 500,000 copies sold.	"Strugglin'--"I'd rather use my gun' cause I get my money quicker...got 'em in the frame__Bang! Bang!...blowing' muthfuckers to the moon.
Snoop Doggy Dogg Death Row/Interscope	*Doggystyle* More than 3 million sold (802,000) in one week. #1 pop album.	"Pump Pump" depicts Snoop arguing with another guy over a girl. After Snoop states, "We can handle this like some gentleman or we can get into some gangsta shit." The other individual replies "What's up nigger? What's up." Next one hears gun shots and laughter and Snoop responds, "That's what's up." [Obviously insinuating that problems are best resolved through the use of a weapon and murder, rather than communication.]
Snoop Doggy Dogg Death Row/Interscope	*Doggystyle* Over 3 million albums sold.	"G Funk Intro"--"We travel in packs and we do it from the back, how else can you get to the booty? We do it doggy style--all the while we do it doggy style. He fucked the fleas off the bitch; she shakes the ticks off his dick, and in her booty he buries his muthafuckin'bone."
Snoop Doggy Dogg Death Row/Interscope	*Doggystyle* #1 pop album sold more than 3million copies (802,000 in a week).	"Tha' Lunatic" --"Oh shit, jumped on man's dick. Hears he had a 12-inch. Now the bitch is lovesick. Who's the blame? The guy or the groupie...now she want to do me. Hoo--wee, this is the life--new bitch every night."
Tupac Shakur Interscope	*2 Pacalypse Now* #15 R&B album	"Tha Shiznit"--"It's a 1.8.7 [California penal code for murder] on a muthafuckin' cop...so what the fuck does the nigger say? Gotta take a trip to the M...A and serve your ass with a muthafuckin' AK[47]."

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No. 05-1597

IN THE

Supreme Court of the United States

WILLIAM TUCKER AS PERSONAL REPRESENTATIVE OF THE ESTATE OF CYNTHIA DELORES TUCKER, A/K/A C. DELORES TUCKER, FOR C. DELORES TUCKER, DECEASED AND WILLIAM TUCKER,

Petitioners,

v.

PHILADELPHIA DAILY NEWS, PHILADELPHIA NEWSPAPERS, INC. AND KNIGHT RIDDER, INC., *ET AL.*,

Respondents.

On Petition For A Writ of Certiorari to the Supreme Court of Pennsylvania

BRIEF IN OPPOSITION

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July 17, 2006

QUESTION PRESENTED

Whether a public figure plaintiff in an action for defamation is required to plead actual malice in accordance with the pleading standards of the jurisdiction in which the action is filed.

RULE 29.6 STATEMENT

Respondent Philadelphia Daily News is a publication of Philadelphia Newspapers, LLC, not a corporate entity.

Respondent Philadelphia Newspapers, Inc., now Philadelphia Newspapers, LLC, was wholly owned by Knight Ridder, Inc. until June 27, 2006. On that date, The McClatchy Company purchased Knight Ridder, Inc. On June 29, 2006, The McClatchy Company sold Philadelphia Newspapers, LLC to Philadelphia Media Holdings LLC. No publicly held company owns 10% or more of Philadelphia Media Holdings LLC.

Knight Ridder, Inc., was purchased by The McClatchy Company, which sold Knight Ridder's former subsidiary, Philadelphia Newspapers, LLC, to the Philadelphia Media Holdings LLC, as described above.

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LAWS

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BRIEF IN OPPOSITION

Respondents respectfully submit that the petition for a writ of certiorari should be denied. The Supreme Court of Pennsylvania's decision that defamation plaintiffs, like other plaintiffs, must comply with Pennsylvania's pleading standards in order to survive dismissal on preliminary objections, is not inconsistent with this Court's decisions, and does not present a federal question. *See* Pet. App. 73a-74a, and as applied on remand, *id.* at 1a, 3a, 20a.

STATEMENT

This defamation case has been before the Pennsylvania Supreme Court twice. In its initial review, that court ruled that petitioners' allegations related to actual malice did not meet the standard for specificity required under Pennsylvania's pleading rules and remanded with leave to replead. On remand, petitioners' amended complaint was found inadequate on the same ground and dismissed.

1. Petitioners are William Tucker, and William Tucker on behalf of his late wife C. Delores Tucker and her estate.

C. Delores Tucker led a high-profile crusade against "gangsta" rap lyrics during the 1990s. Pet. App. 36a. Tupac Shakur responded by incorporating lyrics about her in an album. *Id.* at 37a. The Tuckers sued the Estate of Tupac Shakur and entities involved in producing and selling the album for $10 million claiming, *inter alia*, that as a result of the emotional distress caused his wife, William Tucker had suffered "a loss of advice, companionship and consortium." *Id.* at 39a. Mrs. Tucker issued a press release announcing the suit and that her husband joins her as a plaintiff.

One year later, the Tuckers filed this lawsuit against various newspapers, claiming they were defamed by articles interpreting the loss of consortium claim to include damage to their sexual relationship. *Id.* at 40a.

The Tuckers also filed a similar lawsuit against *Time*, *Newsweek* and the attorney for the Estate of Shakur in federal court. Summary judgment was granted in favor of *Time* and *Newsweek* for lack of actual malice, before the Pennsylvania Supreme Court's initial review of this suit. *Id.* at 40a-41a.

2. The Pennsylvania Supreme Court concluded that the Tuckers, by alleging that the articles had made them objects of ridicule, had pleaded – albeit barely – that the articles were capable of defamatory meaning. *Id.* at 56a.

However, the court found the Tuckers' actual malice allegations impermissibly vague under Pennsylvania Rule of Civil Procedure 1028(a)(3) and ruled that the complaint must be dismissed with leave to amend. *Id.* at 73a-74a. The court held that the newspapers' interpretation of loss of consortium to include loss of sexual relations could not be found inherently improbable or obviously suspect because it was reasonable to rely on the legal meaning of loss of consortium and on an opposing lawyer's conclusion that a loss of sexual relations claim was included. *Id.* at 57a.

The court then analyzed the Tuckers' allegations to determine whether any were legally sufficient, if true, to state the actual malice component of a claim for defamation, as required under Pennsylvania's Rule of Civil Procedure 1028(a)(4) (providing that legal insufficiency of a pleading is a ground for dismissal on preliminary objections). The actual malice standard it relied on was "clear and convincing evidence that the allegedly defamatory statements were false and that [the newspapers] either knew they were false or recklessly disregarded their falsity." *Id.* at 58a. In reviewing the pleadings, it accepted "all well-pleaded allegations of the

complaint as true," and resolved doubts in favor of plaintiffs. *Id.* at 65a-66a.

The court first concluded "several of the Tuckers' allegations are based upon an incorrect understanding of the articles the [newspapers] published." *Id.* at 66a. The court found that the Tuckers mischaracterized the articles, which had stated the opposite of what the allegations claimed.

Second, the court found the Tuckers' allegation that the newspapers failed to consider their press release insufficient to allege actual malice because the press release had not, in fact, clarified that the loss of consortium claim did not include a claim for diminished sexual relations. It said only that William Tucker joins his wife as a plaintiff. *Id.* at 68a.

Third, the court found the Tuckers' allegation that the newspapers' decision to quote the attorney for Shakur's estate about the loss of consortium claim insufficient to allege actual malice because the attorney was "an entirely appropriate person for the newspapers to have interviewed," as the attorney for a defendant to the suit. *Id.* The court also noted that the *Philadelphia Daily News* had acted in an even handed manner by extensively quoting the attorney for the Tuckers in response to the comments of the estate's attorney. *Id.* at 69a.

Fourth, the court rejected a grab bag of allegations that the newspapers had failed to conduct sufficient research before publishing as legally insufficient to allege actual malice. The allegations included: failing to do research into the Tuckers' background – their ages, years of marriage, religious and moral upbringing, and emphasis on privacy; failing to rely on the best sources; sensationalizing the news; failing to check the sources and accuracy of the stories. The court viewed these as alleging that the newspapers departed from reasonably prudent conduct and found this was legally insufficient to allege actual malice. *Id.* at 75a (relying on

Harte-Hanks Communications, Inc. v. Connaughton, 491 U.S. 657 (1989)).

The one allegation the Pennsylvania Supreme Court found potentially sufficient to allege actual malice was the Tuckers' allegation that some of the defendants had been told by the Tuckers' attorney that the Tuckers were not claiming damage to their sexual relationship in this suit. *See* Pet. App. 69a. The court found that a newspaper that had disregarded such a statement might be found to have acted with actual malice because the plaintiff is the master of his claim. *Id.* at 70a. The court, however, found the allegation ambiguous because it did not specify to whom the attorney had spoken. Because a number of the original defendants were no longer in the case, it was not clear that the attorney had provided that information to any of the remaining defendants. *Id.* at 73a.

The court also noted that the Tuckers had included the same allegation in their suit against *Time* and *Newsweek*, but that their attorney later had admitted under oath that he had not told these reporters that the case did not involve damage to sexual relations, and that he thought when the complaint against Shakur *et al.* was filed, that the loss of consortium claim was "to cover everything." *Id.* at 70a-71a. The court also noted that the Tuckers and their attorney had been interviewed repeatedly and had failed to clarify in any of the interviews that they were not seeking compensation for injury to their sexual relations. *Id.* at 71a-72a.

Because the Pennsylvania Supreme Court could not determine whether the Tuckers had, in fact, intended to plead that their attorney had specifically told any of the remaining defendants that the loss of consortium claim did not include loss of sexual relations, the court did not take it upon itself to read this ambiguity out of the complaint. Rather, it sought to provide the Tuckers with the opportunity to fix the ambiguity by amending the one allegation that was potentially capable

of being legally sufficient to state actual malice by clarifying that it applied to any of the current defendants. *Id.* at 74a.

Contrary to the suggestion in the Tuckers' Question Presented, the Pennsylvania Supreme Court did not rule that defamation claims invariably require public figure plaintiffs to have unequivocally told the publisher that the information it is about to print is false. Rather, that court painstakingly reviewed the specific allegations the Tuckers chose to include to determine whether any were legally sufficient to allege actual malice, and concluded that the only one that might be read to do so was too ambiguous to satisfy Pennsylvania's pleading requirements. Instead of dismissing the complaint outright, the court explained to the Tuckers in detail the nature of the deficiency and how it could be solved, and provided them with an opportunity to try again.

3. On remand, the Tuckers amended their complaint, but in a manner that carefully sidestepped stating that their attorney had told the remaining newspaper defendants that their lawsuit did not claim loss of sexual relations. Instead, the new allegation read: "The reporter for the Philadelphia Daily News talked to Plaintiffs' counsel, Richard C. Angino, who answered his questions and explained the basis of the Tuckers' Complaint, which did not involve the Tuckers' sex life." *Id.* at 124a.

In other words, the allegation does not say that Angino *told* the reporter that the complaint did not involve the Tuckers' sex life, it just maintained to the court that the complaint did not involve the Tuckers' sex life. In light of the Pennsylvania Supreme Court's detailed discussion, it was clear that the sidestepping was not accidental and that yet another opportunity to replead would be unavailing.

The trial court dismissed the case for failing to allege anything that, if true, would support actual malice. *Id.* at 25a.

The intermediate appellate court affirmed. *Id.* at 19a. The Pennsylvania Supreme Court denied review. *Id.* at 1a.

DISCUSSION

The question presented does not warrant plenary review.

I. THE DECISION BELOW IS NOT INCONSISTENT WITH THIS COURT'S JURISPRUDENCE.

A. The Pennsylvania Courts Applied Established Law To Both Federal And State Questions.

With respect to actual malice, the Pennsylvania Supreme Court applied the actual malice standard this Court set forth in *New York Times v. Sullivan*, 376 U.S. 254, 279-80 (1964) – that a defamation plaintiff must establish by clear and convincing evidence that the defendants either knew the allegedly defamatory statements were false or recklessly disregarded their falsity. *See* Pet. App. 58a, 65a. The court further applied this Court's teaching that courts have an independent obligation to review evidence of actual malice to ensure it meets the constitutional standard, but factual disputes with respect to that evidence go to the jury. *See* Pet. App. 64a (relying on *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 17 (1990), and *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 521 (1991)).

With respect to the sufficiency of the Tuckers' pleadings, the Pennsylvania Supreme Court applied Pennsylvania law. Under Pennsylvania's Rules of Civil Procedure, dismissal is warranted for "insufficient specificity in a pleading" or "legal insufficiency of a pleading." Pa. R. Civ. P. 1028(a)(3), (a)(4). Moreover, a higher degree of specificity is required under Pennsylvania law than under federal rules. Pennsylvania is a fact pleading state. *See, e.g., Miketic v. Baron*, 675 A.2d 324, 330 (Pa. Super. Ct. 1996). Notice pleading is insufficient. "Under the Pennsylvania system of fact pleading, the pleader must define the issues; every act or performance essential to

that end must be set forth in the complaint." *Santiago v. Pa. Nat'l Mut. Cas. Ins. Co.*, 613 A.2d 1235, 1238 (Pa. Super. Ct. 1992).

The actual malice standard, an admittedly federal issue, is not disputed here. Petitioners do not assert that the state courts misunderstood the constitutional standard promulgated by this Court.

The pleading standards do not appear to fall within this Court's jurisdiction. Certainly, the Pennsylvania Supreme Court is the final arbiter of the nature and scope of those standards. To the extent that petitioners are urging this Court to rule that the First Amendment's guarantee of freedom of speech provides some type of protection to defamation *plaintiffs* from generally applicable rules of civil procedure, such a position is untenable and unworthy of this Court's attention.[1] The First Amendment does not afford plaintiffs a protected right to sue for defamation in the hope that a fishing expedition will reveal some basis for establishing actual malice when the state's civil procedure rules do not afford any plaintiffs the right to bring claims without alleging a factual basis for them.

B. The Decision Below Is Not Inconsistent With *Herbert v. Lando.*

Petitioners are incorrect that the rule applied by the Pennsylvania Supreme Court is inconsistent with *Herbert v. Lando*, 441 U.S. 153 (1979). *See* Pet. App. 10. *Herbert v. Lando* did not address whether particular pleading

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[1] The basis for jurisdiction asserted by petitioners is a right, privilege or immunity under the United States Constitution. Pet. 3. Petitioners have not complied with Rule 14(f) by identifying which federal constitutional provision they believe is at issue. However, they appear to be relying on the First Amendment, as the only decisions they cite are those interpreting that amendment.

requirements were required or precluded by the First Amendment. It did not address pleading at all. Rather, it rejected an evidentiary privilege for editorial processes, that was urged on First Amendment grounds, as applicable to block certain types of discovery. 441 U.S. at 170.

Moreover, in rejecting a constitutional privilege against discovery of editorial processes, *Herbert v. Lando* did not – even in the discovery context – recognize a constitutional privilege for defamation plaintiffs to engage in such discovery notwithstanding otherwise applicable restrictions. To the contrary, this Court emphasized that courts could, and should, exercise their powers under the applicable rules of civil procedure. Thus, it urged federal courts to preclude such discovery when it was inconsistent with the generally applicable federal discovery standards – *i.e.*, if it would be irrelevant, unreasonably annoying, embarrassing, oppressive, or burdensome. *Id.* at 177.

The Pennsylvania Supreme Court did not rely on the allegedly constitutional privilege that *Herbert v. Lando* rejected. It did not recognize any privilege, allegedly conferred by the First Amendment, exempting a party from complying with discovery rules or any other rules of civil procedure. Rather, it relied on Pennsylvania's rules of civil procedure.

Herbert v. Lando is not inconsistent with that decision, because *Herbert v. Lando* does not purport to exempt defamation plaintiffs from complying with the otherwise applicable rules of civil procedure governing the courts in which they choose to file suit. Indeed, as demonstrated, it does exactly the opposite. *Herbert v. Lando* expressly recognized that defamation plaintiffs are subject to general rules of civil procedure, and exhorted courts to use those rules to control the litigation before them. That is precisely what the Pennsylvania Supreme Court did here.

II. REVIEW IS ALSO NOT MERITED ON ANY OTHER BASIS.

Petitioners offer no reasons for this Court to accept review other than the supposed inconsistency with *Herbert v. Lando*, and respondents are not aware of any. Petitioners do not assert that the decision below conflicts with a decision by a United States Court of Appeals or the highest court of another state. They do not claim that the Pennsylvania courts have misunderstood the actual malice standard recognized by this Court. And they do not indicate why it is an important question of federal law that they be exempted from Pennsylvania pleading requirements. This Court may well not have jurisdiction to review the question presented. To the extent that it would have jurisdiction, there are no compelling reasons to exercise it.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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July 17, 2006

(2)

No. 05-1597

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In The
Supreme Court of the United States

WILLIAM TUCKER AS PERSONAL REPRESENTATIVE OF THE ESTATE OF CYNTHIA DOLORES TUCKER, A/K/A C. DOLORES TUCKER, FOR C. DOLORES TUCKER, DECEASED AND WILLIAM TUCKER,

Petitioners,

v.

PHILADELPHIA DAILY NEWS, PHILADELPHIA NEWSPAPERS, INC., et al.,

Respondents.

On Petition For Writ Of Certiorari To The Pennsyvlania Supreme Court

BRIEF IN OPPOSITION OF THE LEGAL INTELLIGENCER

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STATEMENT OF THE QUESTION PRESENTED

Whether a public figure plaintiff who alleged she told "a few" media defendants before publication that the loss of consortium claims asserted in a reported lawsuit did not include harm to sexual relations, and whose claim was dismissed when she failed to re-plead that present defendants were among those so informed, was deprived of any Constitutionally-protected right to prove the newspapers acted with actual malice.

RULE 29.6 DISCLOSURE STATEMENT

The *Legal Intelligencer* is published by The New York Law Publishing Company which is wholly owned by ALM Media, Inc. ALM Media, Inc. is not publicly-held.

STATEMENT OF THE CASE

Respondent, the *Legal Intelligencer*, is satisfied with the material facts and references to the appendix as presented by co-respondent the *Philadelphia Daily News* in its statement, which is incorporated by reference.

ARGUMENT

Respondent the *Legal Intelligencer* joins in co-respondent the *Philadelphia Daily News*' brief in opposition which discusses the ample reasons why the petition should not be granted. The petition not only fails to raise a compelling reason, it offers no reason for this Court to accept review. Petitioners do not suggest that the challenged decision conflicts with a decision of a United States Court of Appeals, or another state's court of last resort on any particular issue. Pa.Sup.Ct.Rule 10. Nor do petitioners claim that the Pennsylvania court misunderstood or misapplied this Court's actual malice standard. As the *Philadelphia Daily News* argues, to the extent petitioners mean to challenge Pennsylvania's fact-pleading standards as applied to defamation claims, and this Court would have jurisdiction to consider that issue, petitioners have likewise raised no compelling reason to undertake such a review.

Instead, the petition relies on a distortion of the record to construct an argument that suggests a conflict between the Pennsylvania Supreme Court's decision and an undisclosed decision of this Court. Although petitioners argue otherwise, the Pennsylvania Supreme Court did no more here than to remand this case to the trial court, allow petitioner a further opportunity to properly plead a defamation claim, and then affirm dismissal of the claim

when petitioners failed to do so. That court did not, as petitioners assert, apply a general rule that a public figure plaintiff must allege that she unequivocally told a newspaper that what it was about to print was false in order to maintain a defamation claim. The court merely affirmed the dismissal of a defamation claim premised on allegations concerning a published statement that was not false, and that could not raise an inference of actual malice.

As public figures, petitioners were required to prove by clear and convincing evidence that the alleged defamatory statement was false, and that the newspapers either knew or recklessly disregarded its falsity. *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 15 (1990); Pet. App. 57a. Petitioners' allegations provided no basis to infer that the newspapers acted with actual malice in reporting the accurate statement that petitioners' loss of consortium claim would by definition include "a claim for damage to the sexual relationship of a married couple." Pet. App. 57a. As the Pennsylvania Supreme Court noted, that is the plain meaning of a consortium claim, as was admitted by petitioners. *Id.*

However, since petitioners also vaguely alleged that they had told "some" or "a few" defendants that their claim for loss of consortium did not include a claim for harm to sexual relations, the Pennsylvania court allowed petitioners an opportunity to re-plead the claim to overcome that ambiguity and plead actual malice by identifying which newspapers had been provided with this information, and which newspapers disregarded that information in their published report on the suit. Pet. App. 66a, 69a-70a. The court offered petitioners this opportunity while expressing reservations about the likelihood they could in good faith make such an allegation, in part based on their attorney's

candid admissions in other federal litigation raising identical claims against publications including *Time* and *Newsweek*. Pet. App. 70a-73a.

Rather than imposing some limitation on pleading a defamation claim, the Pennsylvania court provided petitioners with an liberal *opportunity* to re-plead their defamation claim by alleging facts that would permit an inference of notice to these newspaper defendants that *these petitioners'* loss of consortium claim was unique, limited in scope, and that it did not include harm to sexual relations. Had they been able to do so, the court observed "it would be possible for a jury to conclude that [the] newspapers printed the article with actual malice." Pet. App. 70a. This grant of an additional opportunity to plead cannot reasonably be construed as the Pennsylvania court's having formulated a requirement, as described by petitioners, that a public figure plaintiff must allege it "unequivocally told a newspaper that what it was about to print was false in order to maintain an action for defamation." [Petitioners' statement of question presented].

Petitioners' argument that a writ should issue on grounds that the Pennsylvania Supreme Court's "rule is inconsistent with" *Herbert v. Lando*, 441 U.S. 153 (1979), is no more worthy of consideration. Pet. at 10. As co-respondent the *Philadelphia Daily News* correctly observes, the Pennsylvania court's decisions in this case did not address any evidentiary privilege, let alone accord to these newspapers a "state of mind" editorial privilege of the kind rejected by this Court in *Lando*. 441 U.S. at 175. Petitioners have neither identified a "rule" followed by the Pennsylvania Supreme Court, or anything in that court's decision that is inconsistent with *Lando*.

CONCLUSION

For the reasons stated in this brief in opposition, those stated by co-respondent the *Philadelphia Daily News*, and for the additional reasons explained by the Pennsylvania Supreme Court, and Pennsylvania Superior Court, respondent, the *Legal Intelligencer*, respectfully requests that this Court decline to grant the petition for writ of certiorari.

Respectfully submitted,

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(4)

No. 05-1597

In the Supreme Court of the United States

WILLIAM TUCKER AS PERSONAL REPRESENTATIVE OF THE ESTATE OF CYNTHIA DOLORES TUCKER, A/K/A C. DOLORES TUCKER, FOR C. DELORES TUCKER, DECEASED AND WILLIAM TUCKER,

Petitioners

v.

PHILADELPHIA DAILY NEWS, PHILADELPHIA NEWSPAPERS, INC. and KNIGHT RIDDER, INC., SPORTS & ENTERTAINMENT LITIGATION REPORTER, ANDREWS PUBLICATIONS, INC., LEGAL COMMUNICATIONS, LTD., THE LEGAL INTELLIGENCER, MERIDIAN VENTURE PARTNERS, LP, BASELINE II, INC., AND THE ENTERTAINMENT LITIGATION REPORTER,

Respondents

REPLY BRIEF AND SUPPLEMENTAL APPENDIX ON PETITION FOR A WRIT OF CERTIORARI

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PENNSYLVANIA SUPREME COURT ORDER AT ISSUE

Public figure plaintiffs may maintain an action for defamation against media defendants "only to the extent that they are able to allege that, before Appellant-newspapers printed the articles, the Tuckers or their representative unequivocally told Appellant-newspapers that their loss of consortium claim did not include a claim that the lyrics damaged their sex lives."

Tucker v. Philadelphia Daily News, 577 Pa. 598, 635, 848 A.2d 113, 136 (2004).

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STATUTES:

Pa. R.Civ.P. 1028 1

REPLY TO BRIEFS IN OPPOSITION OF THE *LEGAL INTELLIGENCER* AND THE *PHILADELPHIA DAILY NEWS*

Contrary to the suggestion of both media newspaper-Respondents, the issue before Your Court is not one of local pleading requirements. Pa. R.Civ.P. 1028 provides the manner for testing the legal sufficiency of a Complaint, before an Answer is filed. The text of Rule 1028 is attached hereto, as Supplemental Appendix 175a.

The actual malice standard for defamation cases involving public figures and media defendants was set by Your Court as a matter of federal constitutional law. In 1964 the landmark decision in *New York Times v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964) changed the course of defamation law, when Your Court first determined that the First Amendment limits state law remedies and prohibits "a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not." *New York Times v. Sullivan*, 376 U.S. 254, 279-280, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964). The *New York Times* actual malice standard was extended to defamation actions brought by public figures in *Curtis Publishing Co. v. Butts*, 388 U.S. 130, 87 S.Ct. 1975, 18 L.Ed.2d 1094 (1967), *reh. denied*, 389 U.S. 889, 88 S.Ct. 11, 19 L.Ed.2d 197 (1967).

The Pennsylvania Supreme Court's discussion of actual malice in the context of Mrs. Tucker's Complaint against the *Philadelphia Daily News* and the *Legal Intelligencer*, which discussion begins at 577 Pa. at 621, 848 A.2d at 1127, tracked the actual malice analysis used by the Third Circuit in the

case of *Tucker v. Fischbein*, 237 F.3d 275 (C.A.3 (Pa.) 2001). Importantly, *Tucker v. Fischbein* was before the Third Circuit on motion for summary judgment, after pleading and discovery were completed. Instantly, the *Philadelphia Daily News* and the *Legal Intelligencer* have not answered the Complaint, and there has been no discovery.

Unlike the Third Circuit, the Pennsylvania Supreme Court concluded its discussion of actual malice by determining that there is only one way that public figure plaintiff can establish actual malice required under Your Court's *New York Times* decision, *i.e.*, "before Appellant-newspapers printed the articles, the Tuckers or their representative unequivocally told Appellant-newspapers that their loss of consortium claim did not include a claim that the lyrics damaged their sex lives." *Tucker v. Philadelphia Daily News*, 577 Pa. 598, 635, 848 A.2d 113, 136 (2004).

Contrary to the Statement of the Daily News at p. 5, on remand the Tuckers' Amended Complaint pleaded additional facts, notably that Mrs. Tucker told a reporter from the Daily News that she would file suit in response to the reporter's reading to her of Tupac Shakur's lyrics, and that plain text of the articles expressed the disbelief of the quoted source, Fischbein, in the defamatory matter asserted. However, the Pennsylvania Supreme Court has determined that as a matter of federal law, the Tuckers, have not pleaded actual malice.

Contrary to the Statement of the *Daily News* at pp. 5-6, the trial court dismissed and Superior Court affirmed, not because the Tuckers did not plead actual malice, but because the Tuckers did not plead the magical language contained in the Supreme Court's earlier holding.

Contrary to the Argument of the *Philadelphia Daily News* at p. 1, and the *Legal Intelligencer* at p. 1, Petitioners are

indeed contending that the Pennsylvania Supreme Court has decided an important question of federal law in a way that conflicts with relevant decisions of Your Court's regarding the actual malice standard, Supreme Court Rule 10.(c). There is no distortion as suggested by the *Legal Intelligencer* at p. 1 of its Brief in Opposition.

Contrary to the *Legal Intelligencer's* suggestion at p. 2 of its Brief in Opposition, Petitioners pleaded many allegations that support an inference of actual malice. App. 113a *et seq.*, Pet. 4-7.

Contrary to Argument of the *Daily News* at pp. 6-7, the Pennsylvania Supreme Court did not apply the law of *New York Times* and subsequent decisions of Your Court regarding actual malice in a defamation action by a public figure against a media defendant.

Neither the *Philadelphia Daily News* nor the *Legal Intelligencer* has raised a serious objection to Your Court's jurisdiction to review this question of federal law.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,
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NO. 05-1597
IN THE
SUPREME COURT OF THE UNITED STATES

WILLIAM TUCKER AS PERSONAL REPRESENTATIVE OF THE ESTATE OF CYNTHIA DOLORES TUCKER, A/K/A C. DOLORES TUCKER, FOR C. DELORES TUCKER, DECEASED and WILLIAM TUCKER, Petitioners

v.

PHILADELPHIA DAILY NEWS, PHILADELPHIA NEWSPAPERS, INC. and KNIGHT RIDDER, INC., SPORTS & ENTERTAINMENT LITIGATION REPORTER, ANDREWS PUBLICATIONS, INC., LEGAL COMMUNICATIONS, LTD., THE LEGAL INTELLIGENCER, MERIDIAN VENTURE PARTNERS, LP, BASELINE II, INC., AND THE ENTERTAINMENT LITIGATION REPORTER, Respondents

PROOF OF SERVICE

I, Richard C. Angino, Esquire, hereby certify that I have this 4th day of August, 2006, served three true and correct copies of Reply Brief on Petition for Writ of Certiorari to the United States Supreme Court by sending same by United States first-class mail, postage prepaid, to the following.

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I further certify that all parties required to be served have been served.

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Rule 1028. Preliminary Objections

(a) Preliminary objections may be filed by any party to any pleading and are limited to the following grounds:

(1) lack of jurisdiction over the subject matter of the action or the person of the defendant, improper venue or improper form or service of a writ of summons or a complaint;

Note: Of the three grounds available to challenge venue, only improper venue may be raised by preliminary objection as provided by Rule 1006(e). Forum non conveniens and inability to hold a fair and impartial trial are raised by petition as provided by Rule 1006(d)(1) and (2).

See Rule of Appellate Procedure 311(b) for interlocutory appeals as of right from orders sustaining jurisdiction and venue.

(2) failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter;

(3) insufficient specificity in a pleading;

(4) legal insufficiency of a pleading (demurrer);

Note: The defense of the bar of a statute of frauds or statute of limitations can be asserted only in a responsive pleading as new matter under Rule 1030.

(5) lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action;

(6) pendency of a prior action or agreement for alternative dispute resolution;

Note: An agreement to arbitrate may be asserted by preliminary objection or by petition to compel arbitration pursuant to the Uniform Arbitration Act, 42 Pa.C.S. § 7304, or the common law, 42 Pa.C.S. § 7342(a).

(7) failure to exercise or exhaust a statutory remedy, and

(8) full, complete and adequate non-statutory remedy at law.

(b) All preliminary objections shall be raised at one time. They shall state specifically the grounds relied upon and may be inconsistent. Two or more preliminary objections may be raised in one pleading.

(c)(1) A party may file an amended pleading as of course within twenty days after service of a copy of preliminary objections. If a party has filed an amended pleading as of course, the preliminary objections to the original pleading shall be deemed moot.

(2) The court shall determine promptly all preliminary objections. If an issue of fact is raised, the court shall consider evidence by depositions or otherwise.

Note: Preliminary objections raising an issue under subdivision (a)(1), (5), (6), (7) or (8) cannot be determined from facts of record. In such a case, the preliminary objections must be endorsed with a notice to plead or no response will be required under Rule 1029(d).

However, preliminary objections raising an issue under subdivision (a)(2), (3) or (4) may be determined from facts of record so that further evidence is not required.

Rule 239.5 requires every court to promulgate Local Rule 1028(c) describing the local court procedure governing preliminary objections. Local Rule 1028(c) shall be published on the Pennsylvania Judiciary's Web Application Portal (http://ujsportal.pacourts.us).

(d) If the preliminary objections are overruled, the objecting party shall have the right to plead over within twenty days after notice of the order or within such other time as the court shall fix.

(e) If the filing of an amendment, an amended pleading or a new pleading is allowed or required, it shall be filed within twenty days after notice of the order or within such other time as the court shall fix.

(f) Objections to any amended pleading shall be made by filing new preliminary objections.

Adopted June 25, 1946, effective Jan. 1, 1947. Amended March 28, 1973, effective July 1, 1973; July 18, 1991, effective Jan. 1, 1992; Oct. 24, 2003, effective July 26, 2004; Dec. 16, 2003, effective July 1, 2004; Nov. 2, 2005, imd. effective.

Explanatory Comment—1973

These identical amendments are self-explanatory.

These subdivisions have heretofore provided that, when preliminary objections are disposed of, the Court is faced with a duty to fix a time within which the next procedural move shall take place, but contained no standard time in the event that the Court failed so to fix a time. The amendment provides that the standard time of 20 days, which appears, throughout the entire pleading chapter, shall become the norm unless the Court fixes some other time.

The amendments have the practical advantage of fixing a standard time in all cases, of relieving the Court of the burden of fixing a time except in special situations, and of removing the ambiguity that would result if the Court disposes of the preliminary objection but overlooks fixing any time for the next procedural step in the action.

Explanatory Comment—1991

See Rule 1017.

Explanatory Comment—Oct. 24, 2003

See Explanatory Comment following Pa.R.C.P. No. 239.

Explanatory Comment—Dec. 16, 2003

See Explanatory Comment preceding Pa.R.C.P. No. 1501.